TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 538.

GEORGE W. BEAVERS, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL, ETC.,
FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JANUARY 5, 1901.

(19,186.)

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vs.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 12, 1904.

IV. That the said complaint made as aforesaid by Frank E. Little, a copy of which is hereto annexed and marked Exhibit 3 fails to state any facts whatever which did or could confer upon the said commissioner any jurisdiction to issue the said warrant, a copy of which is hereto annexed and marked Exhibit 2. That it appears from said complaint that each allegation thereto is made upon information and belief and that the source of the affiant's knowledge and the grounds of his belief are insufficiently set forth to confer jurisdiction upon said commissioner. That the warrant issued by Hon. Judge Thomas, a copy of which is hereto annexed and marked Exhibit 4, was and is void upon its face and could and did confer no jurisdiction upon the said commissioner to entertain the proceedings had before him. That said warrant fails to charge your petitioner with the commission of any crime against the United States; and the warrant issued by the Hon. Commissioner Samuel M. Hitchcock, a copy of which is hereto annexed, marked Exhibit 2, is likewise void for its failure to charge your petitioner with the commission of a crime or offense against the United States, triable in the circuit court for the eastern district of New York. That on the alleged hearing had before the honorable commissioner no evidence was adduced which established or tended to establish probable cause to believe the defendant guilty of the offense sought to be charged in the alleged indictment heretofore referred to; that the paper purporting to be a certified copy of an indictment and received in evidence by said commissioner constitutes no proof or evidence either of the facts therein alleged or of probable cause to believe that such facts are true; that the said paper purports to be a certified and not an exemplified copy; that it is inconsistent, contradictory and ambiguous and is not a clear or consistent statement of facts, and that the names of no witnesses are endorsed thereon. That the commitment by the said commissioner hereto annexed and marked Exhibit 2, is illegal and void upon the face, in that it does not comply with sections 208 and 214 of the New York Code of Civil Procedure and that the commitment and the order of removal of your said petitioner issued upon the alleged proof submitted to the said commissioner are violative of the provisions of the United States Constitution which provide, first, " No warrant shall issue but upon probable cause supported by oath or affirmation," second " No person shall be deprived of life, liberty or property without due process of law."

IV. That the circuit court of the eastern district of New York is without jurisdiction to try the defendant for the offense charged in the said indictment. That at the several times therein mentioned your petitioner was not within the eastern district of New York but was and for a long time prior and subsequent to the said several dates mentioned therein continually within the city of Washington, District of Columbia, which is not within the eastern district of New York. That your petitioner has been deprived of the rights accorded to him by the Constitution of the United States, in that he

has been denied the right to be confronted with his accusers and to cross-examine witnesses in his behalf and the right of compulsory process; and the reasonable opportunity to compel the attendance of witnesses and the production of documents to establish the total want *to* probable cause to believe your petitioner guilty of the crime charged or any other crime has also been denied him. All of which appears more particularly from the stenographic minutes of proceedings before said commissioner, a part of which is hereto annexed and marked Exhibit 6.

5 V. That as your petitioner is informed by his counsel and verily believes no warrant should have issued directing the removal of an accused person to stand trial upon an indictment so fatally defective as to matters of substance as to be utterly insufficient to sustain a judgment of conviction after the interposition of a demurrer. That the indictment on which it is sought to remove your petitioner is fatally defective and bad for duplicity in that it charges your petitioner clearly, distinctly and sufficiently in each of the six separate counts thereof with the commission of more than one crime, to wit, four crimes. That the restraint of your petitioner as aforesaid is in violation as aforesaid, of the provisions of the Constitution of the United States and the laws thereof, and particularly section 1014 of the Revised Statutes of the United States. That the alleged copy of the indictment was incompetent as evidence of the facts therein averred because it was not an exemplified or sworn copy and because it was found in the testimony of witnesses who were in the commissioner's presence and who might have testified but were not allowed to testify in regard to the matters therein averred.

VI. That your petitioner has duly objected to the continuance of any proceedings under the said complaint and warrant before the said United States commissioner and has moved for the dismissal thereof on the ground that the said commissioner had no authority or jurisdiction to proceed therewith on the grounds aforesaid or any provision of the Constitution of the United States or the laws thereof and that said objections have been overruled.

6 VII. That the cause or pretence of the imprisonment and restraint of your petitioner is that a charge has been made against him as set forth in the annexed complaint and warrant and commitment and order of removal.

Wherefore your petitioner prays that a writ of *habeas corpus* issue directed to the person having your petitioner in custody commanding him to bring the body of your petitioner before this court forthwith; and further that a writ of certiorari be directed to the said Hon. Samuel M. Hitchcock, United States commissioner as aforesaid in aid thereof and to Thomas Alexander, clerk of the district court of the United States for the southern district of New York, commanding that they return all proceedings against your peti-

tioner to this court forthwith for such action as may be proper in the premises.

Dated November 10th, 1903.

GEORGE W. BEAVERS, *Petitioner.*

MORGAN & SEABURY,
Attorneys for Petitioner.

Office and P. O. address, 290 Broadway, borough of Manhattan, New York city.

UNITED STATES OF AMERICA,
Southern District of New York, County of New York, } ss:

George W. Beavers, being duly sworn, deposes and says, that he has read the foregoing petition and knows the contents thereof; and that the same is in all respects true.

GEORGE W. BEAVERS.

Subscribed and sworn to before me this 10th day of Nov. 1903.

WILLIAM H. LEARY,
[SEAL.] *Notary Public, N. Y. Co., No.* 115.

7 EXHIBIT 1.

The President of the United States of America to the marshal of the United States for the southern district of New York and to his deputies or any or either of them:

Whereas, one George W. Beavers has been arrested and imprisoned in this district by Samuel M. Hitchcock, an United States commissioner for the southern district of New York for an offence alleged to have been committed in another district, that is to say for having on the 25th day of July in the year one thousand nine hundred at the eastern district of New York, in the borough of Brooklyn, being at the time an officer of the Government of the United States that is to say superintendent of salaries of allowances in the office of the First Assistant Postmaster General of the United States in the city of Washington, District of Columbia, and as such officer being duly charged among other things with the consideration of allowances for expenditures and with the procuring of contracts for supplies and with making purchases of supplies in pursuance of rules and regulation- of which the said Beavers had notice and in pursuance of the fraudulent agreement theretofore made by the said Beavers with the Edward J. Brant-Dent Company, whereby the said Beavers was to recommend and procure contract for the purchase from said company by the said Post-

master General, for the use of the department of 250 automatic cashiers upon conditions that said Beavers out of the monies received by said company from such purchase should receive a certain portion and in pursuance of said fraudulent agreement and because of his having contrary to his said duties and trust fraudulently procured and aided in procuring for the said company
8 the business and contract aforesaid, and the said company had furnished said cashiers to the said Post Office Department and had been paid for the same the said Beavers did on said day and place while still being such officer receive from said company the sum of $810.00 as the consideration of his having procured the business and contract aforesaid for the said Edward J. Brandt-Dent Company as by reference to the original warrant of arrest and the commitment endorsed thereupon which are hereto attached, will more fully and at large appear; and

Whereas the said eastern district of New York is that in which trial of said offence is to be had and the United States attorney of this district having applied to me for a warrant of removal under the provisions of section 1014 of the Revised Statutes of the United States.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to remove the said George W. Beavers forthwith to the eastern district of New York, and to safely deliver him to the marshal of said district or to such person as shall be by the said marshal deputized to receive him.

Given under my hand this 10th day of November, in the year one thousand nine hundred and three.

GEO. C. HOLT.
United States District Judge, Southern District of New York.

Attest: —— ——, *Clerk.*

9 The marshal is directed not to execute this warrant until 5 p. m. this day November 10th, 1903.

GEO. C. HOLT, *J.*

(Endorsements on back.)

U. S. Circuit Court.

THE UNITED STATES OF AMERICA
vs.
GEORGE W. BEAVERS.

Warrant of removal.

HENRY L. BURNETT,
U. S. Attorney.

I do hereby acknowledge the receipt from William Henkel, United States marshal for the southern district of New York, of the body of the within-named George W. Beavers, together with a copy of the within warrant.

Dated, Brooklyn, N. Y. —— 1903.

——— ———,
U. S. Marshal.

I do hereby certify that there was this day filed in my office the original warrant of removal, of which the within is a copy.

Dated Brooklyn, N. Y. —— 1903.

——— ———,
Clerk of the United States Circuit Court
for the Eastern District of New York.

10 EXHIBIT No. 2.

The President of the United States of America to the marshal of the United States for the southern district of New York, and to his deputies or any or either of them:

Whereas complaint on oath hath been made to me charging that George W. Beavers did on or about the 25th day of July, in the year one thousand nine hundred at the eastern district of New York in the borough of Brooklyn, being at the time an officer of the Government of the United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the United States at the city of Washington, District of Columbia, and as such officer being duly charged among other things with the consideration of allowances for expenditures and with the procuring of contracts for supplies and with making purchases of supplies, in pursuance of rules and regulations of which said Beavers had notice, and in pursuance of a fraudulent agreement theretofore made by the said Beavers with the Edward J. Brandt-Dent Company, whereby the said Beavers was to recommend and procure a contract for the purchase from said company by the said Postmaster General for the use of the department of 250 automatic cashiers upon condition that said Beavers out of the monies received by said company from such purchase should receive a certain portion, and in pursuance of said fraudulent agreement and because of his having contrary to his said duties and trust, fraudu-

11 lently procured and aided in procuring for the said company the business and contract aforesaid and the said company had furnished said cashiers to the said Post Office Department and had been paid for the same the said Beavers did on said day and place while still being such officer receive from said company the sum of $810. as the consideration of his having procured the business and contract aforesaid for the said Edward J. Brandt-Dent Company.

Against the peace of the United States and their dignity and against the form of the statute of the United States in such case made and provided, and an indictment having been found against said Beavers in the said eastern district of New York upon the said charge and a bench warrant thereon having been issued by Hon. Edward B. Thomas, judge therein, and the said Beavers being now within the southern district of New York,

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said George W. Beavers, and bring his body forthwith before me, or some judge or justice of the United States wherever in the State of New York he may be found, that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal this 3rd day of September in the year of our Lord one thousand nine hundred and three.

[SEAL.] SAM'L M. HITCHCOCK,
United States Commissioner for the Southern District of New York.

HENRY L. BURNETT,
United States Attorney.

12 Endorsements on commissioner's warrant.

Removal sec. 1781 R. S. U. S. No. 1.

U. S. Circuit Court.

THE UNITED STATES OF AMERICA
against
GEORGE W. BEAVERS.

Warrant to apprehend.

HENRY L. BURNETT,
United States Attorney.

I hereby depute McAviney to execute the within process.
Dated New York, Sept. 8, 1903.

WM. HENKEL,
U. S. Marshal.

No. 6537.

The within writ was received Sept. 8, 1903 and the same was executed by arresting the within named George W. Beavers of September 8, 1903 and I hereby now produce his body before Com'r Hitchcock as therein commanded.
Sept. 8, 1903.

WM. HENKEL,
U. S. Marshal for the S. Dist. of N. Y.

Defendant arraigned. Examination demanded. Identity established. Hearing adjourned to Sept. 15, 1903 at 10 a. m. Discharged on bail $5,000. Sept. 8, 1903.

S. M. HITCHCOCK,
U. S. Comm.

13 Sept. 15, 1903.—Hearing had and further hearing adj'd to Sept'r 18, 1903, 10 a. m.

S. M. HITCHCOCK,
U. S. Comm.

Further hearing adj'd to Sept'r 22d, 1903, 10 a. m.

SAM'L M. HITCHCOCK,
U. S. Comm.

Further hearing adjourned to Sept'r 25th, 1903, 10 a. m.
Sept. 22, 1903.

SAM'L M. HITCHCOCK.
U. S. Comm.

Further hearing adjourned to October 5th, 1903, 10 a. m.
Sept'r 25, 1903.

SAM'L M. HITCHCOCK,
U. S. Comm.

Further hearing adjourned to Oct'r 15, 1903, at 10:30.
Oct'r 5, 1903.

SAM'L M. HITCHCOCK,
U. S. Comm.

Attdg. hearing—adj'd to Oct. 23, 1903 at 10 a. m.
Oct. 15, 1903.

SAM'L M. HITCHCOCK,
U. S. Comm.

14 Attdg. and further hearing adj'd to 28th Oct'r 10:30 a. m.
Oct. 23, /03.

SAM'L M. HITCHCOCK,
U. S. Comm.

Attdg.—further adj'd to Nov'r 6th, 1903 10:30 a. m.
Oct'r 28, 1903.

SAM'L M. HITCHCOCK,
U. S. Comm.

Attending and hearing closed. The defendant is committed to the custody of the United States marshal for the southern district of New York to await the order of the United States district judge, there appearing to be probable cause to believe the defendant George

W. Beavers to be guilty of the offense charged in the complaint herein.

Dated New York, Nov. 2nd, 1903.

SAM'L M. HITCHCOCK,
U. S. Commissioner.

Held in $5,000 bail pending decision on application for warrant of removal.

Nov. 2, 1903.

GEO. C. HOLT, *J.*

Prisoner released on bail. Nov. 2, 1903.

GEO. C. HOLT, *J.*

15 EXHIBIT 3.

Approved: Henry L. Burnett, U. S. attorney.

United States District Court, Southern District of New York.

UNITED STATES
vs.
GEORGE W. BEAVERS. } Removal, Sec. 1781, R. S. U. S.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

Frank E. Little, being duly sworn says, that he is a United States post office inspector and further says on information and belief:

That heretofore and on the 25th day of July, in the year of our Lord one thousand nine hundred, one George W. Beavers, was an officer of the Government of the United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the United States, in the city of Washington, in the District of Columbia; that by reason of his being such officer, under the laws and regulations in force for the government of the Post Office Department of the United States and the conduct of its officers and clerks, the said George W. Beavers was charged, amongst other things, with the consideration of allowances for expenditures and with the procuring of contracts with and from persons proposing to furnish supplies to the said Post Office Department involving outlay and increase of expenditure of the monies
16 of the said United States appropriated by law for the service of the said department, and also with making purchases and supplies for the said department from the money so appropriated as aforesaid, and procuring contracts to be made by the First Assistant Postmaster General with those persons pertaining to such purchases, and with procuring such supplies by purchases or contracts,

at the places and in the manner in which such supplies are usually bought and sold between individuals, of which regulations the said George W. Beavers had then and there notice, and in performing such duties to guard the interests of the United States and observe the laws and regulations aforesaid in securing as favorable terms as possible in making such contracts and in purchasing such supplies, which duties and regulations are more particularly set forth in the first count of the indictment against the said George W. Beavers, filed July 23rd, 1903 in the United States circuit court for the eastern district of New York, which is hereto annexed, marked Exhibit A and a certified copy of which is made a part of this complaint and to which for more particularity reference is hereby made.

That the said George W. Beavers at the said time in the borough of Brooklyn in the city and State of New York, and in the eastern district of New York, had made a fraudulent agreement with the Edward J. Brandt-Dent Company, a corporation then and there existing under that name and then and there engaged in the business of selling so-called Brandt — automatic cashiers, whereby the said George W. Beavers, as such officer as aforesaid, was to recommend to the said First Assistant Postmaster General the order and
17 purchase of two hundred and fifty automatic cashiers for the use of the said Post Office Department of the United States and to procure a contract for the same for the said company, which automatic cashiers were to be paid for out of the monies appropriated, as aforesaid, upon condition that the said Edward J. Brandt-Dent Company should give to the said George W. Beavers for his private use and benefit certain portions of the monies which should be paid to the said company for the furnishing of the said automatic cashiers.

That on said 25th day of July, 1900, in the borough of Brooklyn, aforesaid, in the said eastern district of New York, the said George W. Beavers, in pursuance to said fraudulent agreement, and because of his having contrary to his said duties and trust, fraudulently procured and aided in procuring for the said Edward J. Brandt-Dent Company the business and contract aforesaid, and the said company had furnished said cashiers to the said Post Office Department and had been paid for the same at the rate of one hundred and fifty dollars each, did unlawfully while still being such officer as aforesaid, receive from the said company certain money, to wit, the sum of eight hundred and ten dollars, in the form of a check made by one Edmund H. Driggs upon the First National Bank of Brooklyn, which was then and there of the value to the said George W. Beavers of eight hundred and ten dollars, and that the said check was, as the said George W. Beavers then and there well knew, money and consideration for his having procured the business and contract set forth in the said count of said indictment, for the said Edward J. Brandt-Dent Company, all of which was against the peace
18 of the United States of America and their dignity and contrary to the form of the statute of the said United States in

such case made and provided, and as is set forth in Exhibit A hereinbefore referred to.

That thereafter and at the July term of the grand inquest of the United States, held in and for the eastern district of New York an indictment was found by the grand jurors charging the said George W. Beavers, amongst other things, with the offense hereinbefore set forth, that is to say, with the offense contained in said indictment, to which reference is here made and which is hereby attached and hereinbefore referred to as Exhibit A.

That thereafter and on or about the 14th day of August, 1903, a bench warrant was issued upon said indictment by the Hon. Edward B. Thomas, the United States judge, sitting in the circuit court of the United States for the said southern district of New York, for the arrest of the said George W. Beavers, a certified copy of which bench warrant is hereto attached and which is marked Exhibit B; and that the said George W. Beavers has not been found within the eastern district of New York and is not within said district.

That as your deponent is informed and verily believes, the said George W. Beavers is now within the city of New York and borough of Manhattan, and southern district of New York.

FRANK E. LITTLE.

Sworn to before me this 3rd day of September, 1903.

SAM'L M. HITCHCOCK,
U. S. Comm'r.

19 UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Frank E. Little being duly sworn, says, that he is the petitioner who has made the foregoing affidavit and petition; that he has read the same and knows the contents thereof; and that the same is true except such allegations as are stated to be made on information and belief, and as to those matters he believes it to be true.

Deponent further says that the sources of his information are the official documents with reference to the making of the said contract and the said transactions on file in the records of the United States of America and in the Post Office Department thereof and letters and communications from the Edward J. Brandt-Dent Company with reference to the said contract, and from the indictment, a certified copy of which is referred to in said affidavit as Exhibit A and the bench warrant therein referred to as Exhibit B and from personal conversations with the parties who had the various transactions with the said George W. Beavers in relation thereto; and that his information as to the whereabouts of the said George W. Beavers is derived from a conversation had with the said George W. Beavers in said southern district of New York in the past few

days and from the certificate of the United States marshal for the eastern district of New York, endorsed on said warrant.

FRANK E. LITTLE.

Sworn to before me this 3rd day of September, 1903.

SAM'L M. HITCHCOCK,
U. S. Comm.

20 EXHIBIT 4.

UNITED STATES OF AMERICA, *Eastern District of New York,* } ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the warrant annexed to this certificate is a true copy of the original on file and remaining of record in my office and of the return of the U. S. marshal thereon.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the borough of Brooklyn, city of New York, in the eastern district of New York, this 3rd day of September, in the year of our Lord one thousand nine hundred and three.

B. LINCOLN BENEDICT, *Clerk.*

[Seal as in certificate on indictment.]

21 EXHIBIT 4.

To the marshal of the United States of America for the eastern district of New York, and to his deputies or any or either of them:

Whereas, at a circuit court of the United States of America for the eastern district of New York, began and held at the borough of Brooklyn, city of New York within and for the district aforesaid, on the 22nd day of July, in the year of our Lord one thousand nine hundred and three, the grand jurors in and for the said district brought into the said court a true bill of indictment against George W. Beavers for having on the 25th day of July, 1900, he the said George W. Beavers being then and there an officer in the employ of the Government of the United States, received compensation, that is to say, a check for the sum of eight hundred and ten dollars, wilfully, knowingly and unlawfully; from the Edward J. Brandt-Dent Company in payment for services for procuring a contract from the United States Government for the purchase of 250 Brandt automatic cashiers by the said United States Government, the said check being drawn by one Edmund H. Driggs upon the First National Bank of Brooklyn to the order of the said George W. Beavers, as by the said indictment now remaining on file and of record in the said court, may more fully appear; to which in-

dictment the said George W. Beavers has not yet appeared or pleaded.

Now therefore you are hereby commanded, in the name of the President of the United States of America to apprehend the
22 said George W. Beavers and him bring before the said court at the United States court room in the borough of Brooklyn, city of New York, to answer the indictment aforesaid.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the borough of Brooklyn, city of New York, the 14th day of August, in the year of our Lord one thousand nine hundred and three.

B. LINCOLN BENEDICT, *Clerk.*

WILLIAM J. YOUNGS,
U. S. Attorney.

(Endorsements on bench warrant.)

On first division of back:

The within defendant not found.

CHARLES J. HAUBERT,
U. S. Marshal.

September 3, 1903.

On second division of back:

EXHIBIT B.

United States Circuit Court.

THE UNITED STATES OF AMERICA
vs.
GEORGE W. BEAVERS.

Indictment.

Bench warrant.

WILLIAM J. YOUNGS,
U. S. Attorney.

23 EXHIBIT 5.

UNITED STATES OF AMERICA,
Eastern District of New York, } ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the paper annexed to this certificate is a true copy of the original indictment on file and remaining of record in my office.

Seal of the Circuit Court, Eastern District of New York.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the borough of Brooklyn, city of New York, in the eastern district of New York this 3rd day of September in the year of our Lord, one thousand nine hundred and three.

B. LINCOLN BENEDICT, *Clerk.*

24 EXHIBIT 5.

In the Circuit Court of the United States of America for the Eastern District of New York, of the July Term, in the Year of Our Lord Nineteen Hundred and Three.

EASTERN DISTRICT OF NEW YORK, *ss:*

The grand jurors for the United States of America inquiring for the eastern district of New York, upon their oath present, that George W. Beavers late of the borough of Brooklyn, in the district aforesaid before and on the 25th day of July, in the year of our Lord, nineteen hundred, was an officer of the Government of the said United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the United States of the city of Washington in the District of Columbia; that he, the said George W. Beavers, by reason of his being such officer, under the laws and the regulations theretofore and then pursuant to law prescribed and promulgated by the Postmaster General of the United States for the government of the Post Office Department of the said United States and the conduct of its officers and clerks, and then in force, was charged amongst other things, with the consideration of allowances for miscellaneous and incidental expenditures of, and with the procuring of contracts and undertakings with and from persons proposing to furnish supplies to, the said Post Office Department, involving outlays and increase of expenditures of the monies of the said United States appropriated by law for the service of the said department and also of making purchases of supplies for the said department out of said monies so appro-
25 priated as aforesaid and procuring contracts to be made by the said First Assistant Postmaster General with those persons pertaining to such purchases, at the places and in the manner in which such supplies are usually bought and sold between individuals,—of the prescribing and promulgating of which said regulations he the said George W. Beavers then and there had notice; and that, by reason of his being and acting as such officer, — did then and there became and was the duty of the said George W. Beavers, when discharging the duties with which he was so charged as aforesaid, to carefully guard the interests of the United States, and observe the laws thereof and the regulations aforesaid, to secure, by all reasonable means and in the manner provided by law and the regulations aforesaid, terms as favorable to the said United States as

possible when making contracts with and procuring undertakings from persons proposing to furnish supplies for the said department involving outlays and increases of expenditures of the monies appropriated as aforesaid, and to obtain by purchase or contract such supplies, out of the same monies as cheaply as possible, by all reasonable means and in the manner provided by law and the regulations aforesaid; and that, because as the grand jurors aforesaid, upon their oath aforesaid, charge the fact to be, special trust and confidence were reposed in the said George W. Beavers by his superior officers, the Postmaster General and the First Assistant Postmaster General of the United States, by reason of his being such officer of the Government and it then and there also became and was the duty of the said George W. Beavers
26 under the law and the said regulations, to faithfully and truthfully advise his said superior officers concerning all the matters requiring their supervision and notice, and pertaining to the discharge of his, the said George W. Beavers's said duties, and to inform them truly concerning all allowances for the incidental expenditures and contracts and purchases considered by him in the discharge of his said duties, and concerning all bills rendered against the said United States and the said Post Office Department in connection with such allowances, contracts and purchases, and especially in connection with the purchase of automatic cashiers for the use of said department, and of post offices under the same.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, on the said twenty-fifth day of July in the year of our Lord nineteen hundred, at Brooklyn, aforesaid, in the said eastern district of New York, the Edward J. Brandt-Dent Company, was a corporation then and there existing under that name, and was then and there engaged in the business of selling, so-called Brandt automatic cashiers, and then and there had made a fraudulent agreement with the said George W. Beavers, officer as aforesaid, whereby the said George W. Beavers was to recommend to the First Assistant Postmaster-General the ordering and purchasing of a large number, to wit, two hundred and fifty, of the said automatic cashiers, for the use of the said Post Office Department, and thereby
27 procure and aid in procuring for the said Edward J. Brandt-Dent Company the business of and contract for furnishing the said automatic cashiers to the said Post Office Department to be paid for out of the monies appropriated as aforesaid, upon condition that the said Edward J. Brandt-Dent Company should give to him, the said George W. Beavers, for his private use and benefit, from time to time as the said Edward J. Brandt-Dent Company should receive the same, some considerable portion (the exact proportion whereof is to the said grand jurors unknown), of the monies which should be paid to the said Edward J. Brandt-Dent Company on account of, the furnishing of said automatic cashiers; and, further, that on the twenty-fifth day of July, in the said year aforesaid, at Brooklyn aforesaid, in the said eastern district of New York, the

said George W. Beavers, in pursuance to the said fraudulent agreement, and because of his having, contrary to his said duties and trust, fraudulently procured and aided in procuring for the said Edward J. Brandt-Dent Company the business and contract aforesaid, and because the said Edward J. Brandt-Dent Company had under that contract furnished the said automatic cashiers to the said Post Office Department, and had been paid for the same, at the rate of one hundred and fifty dollars each, out of the moneys so appropriated as aforesaid, unlawfully did, while still being such officer as aforesaid, take and receive from the said Edward J. Brandt-Dent Company, certain money, to wit, the sum of eight hundred and ten dollars; and that the said money was, as he the said George W. Beavers then and there well knew, money and consideration for his having procured the said contract for the said Edward J. Brandt-Dent Company as aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

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2. And the said grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers, on the said twenty-fifth day of July, in the same year of our Lord nineteen hundred, was an officer of the Government of the said United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the said United States, as in the first count of this indictment set forth, and was, by reason of his being such officer, charged with the trust and duties in the said first count mentioned, and, under the circumstances therein set forth, and in pursuance of the fraudulent agreement therein mentioned, had procured and aided in procuring for the said, The Edward J. Brandt-Dent Company the business of and contract for furnishing a large number, to wit, two hundred and fifty other automatic cashiers, of the kind described in the said first count, upon the condition in the same count mentioned, and, because the said Edward J. Brandt-Dent Company had, under the last mentioned contract, furnished the automatic cashiers last aforesaid to the said Post Office Department, and had been paid for the same at the rate of one hundred and fifty dollars each, out of the moneys appropriated as in the said count aforesaid, unlawfully did, while still being such officer as aforesaid, take and receive from the said Edward J. Brandt-Dent Company certain valuable property and consideration, to wit: a check drawn by one Edmund H. Driggs upon the First National Bank of Brooklyn aforesaid, for the payment of eight hundred and ten dollars to the order of the said George W. Beavers, and of the value of eight hundred and ten dollars; and that the said check was, as he the said George W. Beavers then and there well knew, consideration for his having procured the business and contract in this count of this indictment mentioned for the said Edward J. Brandt-Dent Company; against the peace and dignity of the said United States, and

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contrary to the form of the statute of the same in such case made and provided.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers, on the said twenty-fifth day of July in the same year of our Lord nineteen hundred, was an officer of the Government of the said United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the said United States, as in the first count of this indictment set forth and was by reason of his being such officer charged with the trust and duties in the first count mentioned, and, under the circumstances therein set forth, and — pursuance to the fraudulent agreement therein mentioned, had procured and aided in procuring for the said Edward J. Brandt-Dent Company the business of and contract for furnishing a large number, to wit, two hundred and fifty, other automatic cashiers, of the kind described in the said first count, upon the condition in the same count mentioned, and, be-
30 cause the said Edward J. Brandt-Dent Company had under the last mentioned contract, furnished the automatic cashiers last aforesaid to the said Post Office Department, and had been paid for the same, at the rate of one hundred and fifty dollars each, out of the money appropriated as in the said first count aforesaid, unlawfully did, while still being such officer as aforesaid, take and receive from the said Edward J. Brandt-Dent Company *certain money*, to wit, the sum of eight hundred and ten dollars; and that the same was, as he the said George W. Beavers then and there well knew, money and consideration for his having procured the said contract for the said Edward J. Brandt-Dent Company as aforesaid; which said money in this count mentioned as having been received by the said George W. Beavers then and there, to wit, at the time and place, when and where the same was so received by him as aforesaid, was delivered and paid to the said George W. Beavers by the hands of one George F. Miller and the said Edmund H. Driggs who were then and there the agents of and persons acting for and on behalf of the said Edward J. Brandt-Dent Company in that transaction.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said George W. Beavers, at the time and place and in the manner and form in this count of this indictment aforesaid, while being an officer of the Government of the said United States unlawfully did take and receive money from another person for procuring and aiding to procure a contract from the said Post Office Department of the said Government against the peace and
31 dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers on the twenty eighth day of November, in the same year of our Lord nineteen hundred, was an officer of the Government of the said United States,

that is to say; superintendent of the said salaries and allowances in the office of the First Assistant Postmaster General of the said United States, as in the first count of this indictment set forth, and was, by reason of his being such officer, charged with the trust and duties in the said first count mentioned, and, under the circumstances therein set forth, and in pursuance to the fraudulent agreement therein mentioned, had procured and aided in procuring for the said Edward J. Brandt-Dent Company the business of and contract for furnishing a large number, to wit, two hundred and fifty, other automatic cashiers, of the kind described in the said first count, upon the condition in the same count mentioned, and because the said Edward J. Brandt-Dent Company had under the last mentioned contract, furnished the automatic cashiers last aforesaid to the said Post Office Department, and had been paid for the same, at the rate of one hundred and fifty dollars each, out of the monies appropriated as in the said first count aforesaid, unlawfully did, while still being such officer as aforesaid, take and receive from the said Edward J. Brandt-Dent Company certain money, to wit, the
32 sum of two hundred and fifty dollars; and that the same was, and he the said George W. Beavers then and there well knew the same to be, money in consideration for his having procured the business and contract in this count of this indictment mentioned for the Edward J. Brandt-Dent Company from the Post Office Department of the Government of the said United States; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers on the twenty-eighth day of November, in the same year of our Lord nineteen hundred was an officer of the Government of the said United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the said United States, as in the first count in this indictment set forth, and was by reason of his being such officer, charged with the trust and duties in the said first count mentioned, and, under the circumstances therein set forth, and in pursuance to the fraudulent agreement therein mentioned, had procured and aided in procuring for the said Edward J. Brandt-Dent Company the business of and contract for furnishing a large number, to wit, two hundred and fifty other automatic cashiers, of the kind described in the said first count, upon the condition in the same count mentioned, and because the said Edward J. Brandt-Dent Company had, under the last mentioned contract, furnished the automatic cashiers last aforesaid to the said Post Office Department, and had been paid for the same, at the rate of one hundred and fifty dollars each, out of
33 the monies appropriated as in the said first count aforesaid, unlawfully did while still being such officer as aforesaid, take and receive from the said Edward J. Brandt-Dent Company certain valuable property and consideration, to wit, a check drawn by one

Edmund H. Driggs, upon the First National Bank of Brooklyn aforesaid, for the payment of two hundred and fifty dollars to the order of the said George W. Beavers and of the value of two hundred and fifty dollars; and that the same was, and he the said George W. Beavers, then and there well knew the last mentioned check to be, consideration for his having procured the business and contract in this count of this indictment mentioned for the said Edward J. Brandt-Dent Company from an officer of the said United States, to wit, the First Assistant Postmaster General of the said United States; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

6. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers, on the twenty-eighth day of November in the same year of our Lord nineteen hundred, was an officer of the Government of the said United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the said United States, as in the first count of this indictment set forth and was, by reason of his being such officer, charged with the trust and duties in the said first count mentioned, and, under the circumstances therein set forth and in pursuance of the
34 fraudulent agreement therein mentioned, had procured and aided in procuring for the said Edward J. Brandt-Dent Company the business of and contract for furnishing a large number to wit, two hundred and fifty other automatic cashiers, of the kind described in the said first count mentioned, and because the said Edward J. Brandt-Dent Company had, under the last mentioned contract, furnished the automatic cashiers last aforesaid to the said Post Office Department, and had been paid for the same at the rate of one hundred and fifty dollars each, out of the monies appropriated as in the said first count aforesaid, unlawfully did, while still being such officer as aforesaid, take and receive from the said Edward J. Brandt-Dent Company, certain moneys, to-wit, the sum of two hundred and fifty dollars; and that the same was, and he the said George W. Beavers then and there well knew, the same to be, money and consideration for his having procured the last mentioned contract for the said Edward J. Brandt-Dent Company as aforesaid; which said money in this count mentioned as having been received by the said George W. Beavers then and there, to wit, at the time and place when and where the same was so received by him as aforesaid, was delivered and paid to the said George W. Beavers by the said Edmund H. Driggs, who then and there was the agent of the person acting for and on behalf of the said Edward J. Brandt-Dent Company in that transaction.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said George W. Beavers at the time and place and in the manner and form in this count of this indictment aforesaid, while being an officer of the Government of the United States, un-

lawfully did take and receive money from another person for
35 procuring and aiding to procure for such other person a contract from the Post Office Department of the Government of the United States; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

WM. J. YOUNGS,
United States Attorney, Eastern District of New York.

Endorsement on indictment.

On second division of the back:

EXHIBIT A.

2 / 287.

United States Circuit Court, Eastern District of New York.

THE UNITED STATES OF AMERICA
vs.
GEORGE W. BEAVERS. } Calendar No. 362.

Indictment.

Sec. 1781, R. S. U. S.

WILLIAM J. YOUNGS,
United States Attorney, Federal Building, Brooklyn, N. Y.

A true bill.

GEORGE E. FOSTER, *Foreman.*

Filed July 23, 1903.

On third division of back:

36 August 12, 1903, United States attorney moves for bench warrant. Motion granted. Order entered. August 14, 1903. Bench warrant issued.

(Endorsed:) U. S. circuit court, southern district. In the matter of the application of George W. Beavers for the writs of *habeas corpus* and certiorari. Petition. Morgan & Seabury, attorneys for petitioner. No. 290 Broadway, borough of Manhattan, New York. N. Y. U. S. circuit court, southern district of New York, Filed Nov. 11, 1903, John A. Shields, clerk.

37 EXHIBIT 6.

UNITED STATES OF AMERICA,
Southern District of New York.

THE UNITED STATES
vs.
GEORGE W. BEAVERS.

Before Samuel Hitchcock, Esq., U. S. Commissioner.

NEW YORK, *September* 15, 1903.

Appearances: Henry L. Burnett, Esq., United States attorney, and Henry A. Wise, Esq., ass't U. S. attorney, for the Government, Messrs. Morgan & Seabury, by Max D. Steuer, Esq., of counsel, for the defendant.

Mr. BURNETT: I understand that on the original arraignment of the accused, evidence was introduced on behalf of the Government identifying the accused, prisoner at the bar, and also that a certified copy of the indictment was introduced, but that there was no stenographer present, no notes taken, and to the end that the record may be complete, we will now introduce evidence of identification, taken as denoted.

No objection.

FRANK E. LITTLE, being duly sworn, testified as follows:

Examined by Mr. WISE:

Q. You know Mr. George W. Beavers?

A. I do.

Q. How long have you known him?

A. Ten years of more.

38 Q. Will you state whether you know him to be the person mentioned in the indictment filed in the Kings county on the 8th day of September, 1903?

Mr. STEUER: I object to it as incompetent unless he was there and was told by the grand jury, and knew whom the grand jury indicted. How does he know?

The COMMISSIONER: I sustain that objection.

Q. I show you a copy of an indictment filed the 23rd of July, 1903, in the eastern district of New York, (handing), which charges one George W. Beavers with the commission of an offense as set out in that indictment. Will you state whether you know the George W. Beavers referred to in that indictment?

Mr. STEUER: I object to that as calling for a conclusion by the witness; and, further, on the ground that it assumes a fact not

proved, that there is a crime or accusation contained in a paper called a copy of an indictment.

Objection sustained.

Q. State whether you know the George W. Beavers referred to in that paper that you have in your hand.

Mr. STEUER: Objected to on the ground that it does not appear that he has any knowledge at all as to who is the person mentioned in that paper.

Objection overruled. Exception.

A. Yes.

Q. What Beavers is it?

A. George W. Beavers.

Q. The person in the court here now?

39 Mr. STEUER: I object to that on the ground that it does not appear that he has any information as to who the George W. Beavers is who is intended to be named in that paper.

The COMMISSIONER: Intended to be named: It says named.

Mr. STEUER: How is it possible for any other people but those who were there to know who was the person in that paper? Does it appear that there is only one George W. Beavers in the United States? The witness is to testify that he is a certain individual; that at best is a guess.

The COMMISSIONER: He is asked if he knows the George W. Beavers described in that indictment.

Mr. STEUER: There is no George W. Beavers described in that indictment. There is a George W. Beavers mentioned.

Objection overruled. Exception.

A. He is here.

Q. Do you know what position under the Government George W. Beavers held?

Mr. STEUER: I object to that on the ground that it calls for the conclusion of the witness. It does not appear that he has any information, the sources of his information or the grounds of his belief.

Objection overruled. Exception.

A. He was general superintendent of the salary and allowance division of the First Assistant Postmaster General's office, Washington, D. C.

40 Q. At what time?

A. Up to the spring of the present year.

Q. And that is the same person who is in the court-room?

A. The same person.

Q. If you know, state where he performed his duties as such.

A. In the office of the First Assistant Postmaster General in the Post Office Department.

Q. At Washington?

A. At Washington, D. C.
Q. And is the person now arraigned before the court, of the name of George W. Beavers, the same person who occupied this position?
A. He is.

Cross-examination by Mr. STEUER:

Q. You are Mr. Frank E. Little?
A. Yes. sir.
Q. And you are the same person who verified an affidavit on the 3rd of September, 1903, before the commissioner?
A. Yes.
Q. Now, on the 3rd day of September, 1903, what position did you occupy in the United States Government?
A. Post office inspector of the United States.
Q. Had you anything to do with the department in which the George W. Beavers, concerning whom you give testimony here, was connected with?
A. I was connected with the same department; the Post Office Department.
Q. Were you connected with that department to which Mr. Beavers was assigned, that branch of the department?
A. Mr. Beavers was assistant to the First Assistant Post-
41 master General and I was connected as a Fourth Assistant Postmaster General; both in the same building.
Q. On the 3rd day of September, 1903, did you have any personal knowledge of what Mr. Beavers had done in 1901?
A. Personal knowledge insofar as my investigation had given me information.
Q. And beyond that you had no knowledge at all concerning anything he had done?
A. Only from information.
Q. And what were the sources of your information in respect to Mr. Beavers?
A. Various.
Q. Just enumerate them for us.

Mr. BURNETT: I think this has gone far enough, your honor. We simply produce this witness for identification.
The COMMISSIONER: What is the purpose, Mr. Steuer?
Mr. STEUER: The purpose is to elicit from him while he is on the stand, the sources of his information upon which he made this affidavit and complaint.
Mr. WISE: I submit that the affidavit is the best evidence of that, and the certified copy of the indictment which is attached thereto and made part thereof and marked Exhibit "A." That affidavit speaks for itself as plainly as any statement the witness can make.
Mr. STEUER: If that is true, the affidavit has not impressed you very much, Mr. Wise. That is not what he relies on.

Mr. BURNETT: The main objection, and the real objection, is that they are going into the defense now. If there is any objection to the affidavit or complaint, they should raise it by motion, not by cross-examination. It is now simply a question of identification; not to open up a new line of defense.

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Objection sustained.

Mr. WISE; If the court please, I offer in evidence a certified copy of the indictment found by the grand jury of the eastern district of New York, which is in your possession and has already been made——

The COMMISSIONER: That was offered in evidence at the last hearing.

Mr. STEUER: Mr. Commissioner, I understood they were received provided the objections that were to be made to it did not *to* convince you that it was incompetent.

The COMMISSIONER: The objections to the receipt of the certified copy of the indictment have been considered by me and the indictment is received in evidence.

Mr. STEUER: But we have not had opportunity to state the objection. This hearing was adjourned for one week——

The COMMISSIONER: Do you object to the indictment on the ground of its insufficiency?

Mr. STEUER: As to its competency as evidence.

The COMMISSIONER: To any extent?

Mr. STEUER: If we were satisfied that there was an indictment that stated a crime as required in law, in the concise manner required in law, and that the indictment was not bad—the paper called indictment was not bad—; if this paper was an indictment, were to be received for any evidence, it would have to be exemplified, and in the absence of exemplification it cannot be re-

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ceived as testimony.

The purpose of the offer of this paper is not to show that an indictment has been found. The purpose of the offer of this paper is to come within the rule that by presenting a presumptive case of guilt—is made out for the purpose of making a presumptive case of guilt—a certified copy of a paper is absolutely useless, because the rule of law requires that evidence in order to be such, in order to constitute testimony, must be accompanied by the sworn oath of somebody, and your honor will find in every one of the decisions discussing the question of the weight and the force probately considered, of a paper called an indictment is only considered when that paper shows that it was found upon oath, and is accompanied with an oath of a person that knows that it was found upon oath. Now, the manner in which it is determined as to whether or not it was found on oath is by the examination of the paper itself, and if it does not appear from an examination of the paper produced and sought to be introduced in evidence, that that paper is the result of testimony produced upon oath, then that paper is not to be received in evidence as presumptive proof of a *prima*

facie case of guilt. Now then, your honor will find in express language laid down in the Green case, and the question arises whether or not it appears by indorsement upon the paper that there was any witness before the grand jury, and in the Green case it was said that it is necessary that the paper should have contained and indorsed upon it the names of the persons who appeared before the grand jury that is
44 supposed to have found and lodged an indictment, so that it might appear before the commissioner or committing magistrate, as the case might be, that that testimony which resulted in the making of this finding was given on oath. I think an inspection of this paper will convince your honor that there is not an indorsement of a single person on it as having appeared before the grand jury. I do not think it necessary to argue that if the grand jury had held a session without having had a single witness and had found an indictment, that that paper which is seen fit to be called by the Government or that grand jury an indictment, would not be such evidence from which would follow the presumption of guilt against any person accused, and in the absence of the indorsement of the names of the persons from whose testimony it is sought to find this indictment, why no presumption follows that it is a paper of such validity as to lend presumptive force to guilt.

Now, the second objection that I opened with is that the paper is not exemplified, and your honor will find that that is the precise point considered in the Price case, and in that case it was held that a certified copy of a paper is not sufficient, but that it must be exemplified so that it will appear that it is an andictment and not a statement by a clerk that such a paper exists in another department of the Government.

And upon these two grounds we object to the paper being considered any evidence in the case and being received as evidence in this proceeding.

Mr. BURNETT: I think your honor is so well advised, it is not necessary to go into that.

45 The COMMISSIONER: The objection is overruled.

Mr. BURNETT: Now, proof as to identity having been completed and the indictment received in evidence, the Government submits the case to your honor.

Mr. STEUER: We move to dismiss this proceeding on the ground that the complaint for removal is insufficient in law, first; second, on the ground that the evidence submitted in support of the complaint is insufficient in law to sustain a complaint. And we move to vacate and set aside and to dismiss the warrant on the ground that the warrant fails to state any crime. In support of the application to dismiss the complaint upon the ground that the complaint itself is insufficient, we call your honor's attention to the fact that the complaint is based upon information and belief.

That affidavit on information is made by Mr. Little, the person who gave the testimony with respect to removal, and to show your

honor that that is not sufficient we call your honor's attention to a decision recorded in the 3rd of Wood's United States Circuit Court Reports where the exact question, now considered, upon a complaint based upon information and belief, was before the commissioner, and here it was held, upon review, that that complaint was insufficient. The court said, An affidavit made absolutely upon information dereved from others whose names are not given—and your honor will observe that the names of no persons are enumerated, not a single name is furnished, either on the indictment, that is referred to—if it be an indictment at all—certainly no name is referred to in
46 the warrant, and, of course, that is a source of information relied upon by Mr. Little—no name of any person he relied upon and whom he refers to, or documents. These documents, if they contain any name such name is not disclosed; nor is the nature or the character of the information derived from such document, given in the course of Mr. Little's affidavit; nor does Mr. Little assign the slightest reason why the originals of those documents, either exemplified or verified—a single copy of those papers—are not attached to the affidavit. And continuing the court says, But a person who swears that he has a reason to believe that that person, naming him, has committed an offense against the law does not meet the requirements of article IV of the amendments of the Constitution of the United States.

Now, I cannot conceive, except for the distinction of name as to defendant, how the complaint in the case then considered—to which I make reference—differs from the case that is now before your honor. Continuing, the court says, The probable cause mentioned in that article which is to be supported by oath or affirmation, and upon which alone a warrant can issue, must be submitted to the committing magistrate, who must judge of the sufficiency of the grounds shown for believing the accused party guilty. In other words, if Mr. Little were to disclose to your honor from whom it is that he derives the information upon which he relies so that your honor could then judge, independent of Mr. Little's affidavit,
47 as to whether there was information upon which he was warranted to rely, then it would be for your honor, and not until then, to say that a presumptive case had been made out. But when confronted alone by Mr. Little's affidavit that he has information upon which he believes that a certain person, naming him, is guilty of an offense charged and set out in the paper called the indictment, then, the court says, that is not sufficient before the commissioner for him to say that there is not probable cause of guilt. The magistrate before issuing a warrant should have before him the oath of the real accuser to the facts; the real accuser to the facts, not a person to whom it is whispered by the the breezes or sung by the birds, but the person who knows that somebody of his own knowledge has done something wrong. That is the person whose oath should be before the magistrate before a warrant for the apprehension of a person supposed to be guilty of the offense

in the indictment, should be issued. I beg your honor to examine this case because it is precisely on a footing with the present status of the case before you, and seems to be, is a complete determination of the question to be determined.

Mr. WISE: Now, if it please the court, in reply to that statement, without referring to any decisions, I do not think that the court, or any of the parties to the other side, for a moment deny that a criminal warrant may be issued upon a complaint which is based upon information and belief, if the sources of the information and the grounds of the belief are set forth; and that is exactly what
48 has been done here, and has not been done by any whispering of the breezes or any such thing, but by competent legal evidence which was produced before the commissioner before the issuance of the warrant, which was a part of the complaint on which the warrant was issued, and which, by no less superior authority than that of the United States Supreme Court, has been held to be competent when it is certified by the proper officer. In the case of Green *v.* Henkel it was held flat-footed that the indictment in this case was *prima facie* good, and when a copy of it is certified by the proper officer the magistrate is justified in treating the indictment as an indictment found by a competent grand jury, and is not authorized to go behind it, nor a certified copy of the indictment.

The COMMISSIONER: I will not sustain your objection on that ground.

Mr. STEUER: What I addressed Mr. Wise on is where the indictment is received as *prima facie* evidence, that in those cases the indictment was indorsed by the witnesses.

Mr. WISE: The statement of the complainant was that the affidavit was based on information and belief, and that the sources of that information and the grounds of belief were set forth and incorporated in an indictment a certified copy of which was marked and made part of the complaint, and that the copy of the indictment, was certified by Mr. Benedict, who was the clerk in the district in which that indictment was found and, under the Green *v.* Henkel case, it is competent evidence of the fact that the indictment
49 has been found by a competent grand jury. On top of that, I submit that under the numerous decisions in every district—almost every district of the United States, with the exception of the southern district, and I do not even except that—that a certified copy of an indictment has been held to be sufficient *prima facie* evidence of the commission of the offense, and I believe that the Government has proceeded in a proper method.

The COMMISSIONER: The motion, as I understand it, is to dismiss the complaint on the ground of the insufficiency of the complaint itself; on the ground of the insufficiency of the evidence before the commissioner; and on the ground of insufficiency of the warrant.

Mr. STEUER: Those are the grounds on which I rely.

The COMMISSIONER: Your motion is denied.

Mr. STEUER: I only addressed your honor with respect to the complaint and not the sufficiency——

Mr. WISE: I understood you to object to the warrant and the evidence.

Mr. STEUER: I thought that Mr. Wise wanted to be heard. The only objection that I discussed before your honor was the objection to the complaint itself and its insufficiency I want now to be heard on the question of the sufficiency of the warrant.

On the question of the sufficiency of the evidence, there is before your honor what is called a certified copy of an indictment. Now, assuming that a certified copy of an indictment not indorsed
50 with the names of witnesses is sufficient *prima facie* evidence, then that indictment, in order to be such proof, would have to be open to no objection, because a demurrable indictment, a defective indictment, an indictment upon which a defendant would not have to stand trial, is no indictment.

The COMMISSIONER: I certainly agree with you.

Mr. STEUER: Now, that being admitted, we start on one said premise, that if this indictment is bad upon any ground upon which it could be demurred to, then this defendant upon the proof before your honor must be discharged and an order for removal should be denied.

In order to discover as to whether this indictment is good why we have to look to the law under which it is charged and of which it is charged the defendant was guilty of the offense, and that I believe is section 1781.

Mr. WISE: I understood at the opening of the hearing that no question was raised as to the sufficiency of the indictment as far as charging any crime——

Mr. STEUER: Why, Mr. Commissioner, I don't believe there was such an understanding.

As we read section 1781, it charges, there is possible the commission of four separate crimes under that section, and these four crimes consist in the making of a contract; in the making of a contract with a person to lend assistance either in procuring or in aiding to procure a contract with the United States Government for a benefit. That is to say, if Beavers, the alleged defendant, entered into a contract with an individual or a corporation by the terms of which contract, for a consideration ac-
51 cruing to Beavers, he agreed, regardless of what he subsequently did, but he just made the agreement that he would either procure or aid in procuring a contract, that would be a crime, and it would not be necessary in order for Beavers to commit that crime, to afterwards either procure or aid in procuring a contract. Have I made myself clear with respect to that? So that if Beavers met, on the street or elsewhere, any individual connected with this Dent-Brand Co., and they approached Beavers with a proposition and said, now if you use your services, your good offices, your being

connected with the Government—and here it appears that he is an officer of the Government—so that if as an officer of the Government he was approached by some one of this corporation and they said, if you will use your good offices with the Government and advise the purchase of our article, we will pay you $1000, or 50 cents a barley corn, if you please, and Beavers said, I will; that is a crime right there regardless if Beavers ever after that intended to carry out that contract or not. The making of that contract is of itself a separate and distinct crime. Under the first count of the indictment you will find that the crime is distinctly stated and that it is intended to be stated that Beavers made a contract with the Dent-Brand Co., by the terms of which Beavers was to use his influence, being an officer of the Government, for the purpose of bringing about the making of a contract by this corporation with the Government.

52 Now then, if that is a crime under section 1781, and if the indictment charges the commission of that crime, then if in the same count the indictment charges another separate and distinct crime under section 1781 of the Revised Statutes, are we agreed that an indictment is bad for duplicity; because if we are not then it would be for me to convince your honor that where a count in an indictment states two separate and distinct crimes under one provision of law, that an indictment is bad for duplicity.

The COMMISSIONER: I shall hear you on that.

Mr. STEUER: The cases in support of the proposition that such an indictment would be void for duplicity—that is demurrable for duplicity—are all enumerated on our memoranda that was in support of that proposition, so that I will assume the conclusion of law to be made—it is either so or not so—I want to get to the point to illustrate to your honor that this indictment in its first count states at least three crimes, and not one crime, as it is required by law.

Now, under the same section 1781, it is made a crime if an officer of the Government does in fact use his good offices to bring about the making of a contract by the Government with some third person for the purchase of the article sold by that person—to come back to this case and to see what is charged in this indictment—and charging Beavers with entering into such a contract which is under the law and under that section of the law, a crime, they go on further to charge that Beavers in pursuance of the making of the contract, distinctly set out and fully charged

53 did on the 25th of July, 1901, advise the First Assistant Postmaster General to purchase the goods of the Dent-Brand Co., called those goods by name, automatic cashiers. Now, then, after first charging that officer with the crime of making such a contract with the Dent-Brand Co. they go on and charge him, under the same count, under the same provision of law, with an entirely separate and distinct crime, to wit, the crime of counselling and advising the Government to make such a contract, and the giving of

that counsel and advice to the Government—which is charged as one of the duties of Beavers—if it was given in pursuance of a contract made with the Dent-Brand Co., regardless of the fact whether the Government ever entered into a contract or not, the giving of that advice and the using of his office for that corrupt purpose is under that section a separate and distinct crime; and he could be tried for that if they did not prove as a crime the making of the contract. If they said Mr. Beavers is not called to the bar to be tried for the making of the contract, the contract having been made, he in pursuance of the making of that contract, did use his offices and give that advice, then Beavers is guilty of the crime, and we see that that under section 1781 constitutes a separate and distinct crime.

Now, we see under section 1781 the third crime enumerated thus: That Beavers succeeded in his efforts and did procure through his advice and counsel, in bringing it about that that contract was actually made and entered into between the Dent-Brandt Manufacturing Co. and the United States Government for the purchase of the 250 registers.

54 Now, then, if Beavers never made a contract with that corporation, if Beavers never saw a soul that was connected with that corporation, but if Beavers corruptly used his position, which was to advise and counsel—as is charged in the indictment—the First Assistant Postmaster General with respect to the purchase of supplies, and he did that corruptly, and such a contract was made by the United States Government, and Beavers received part of the money which the United States Government appropriated for that purpose and paid over; if Beavers received part of that money, the receiving of that money was a separate and distinct crime under section 1781, upon which Beavers could be called to trial. If Beavers did nothing in this transaction, if Beavers lay dormant, but Beavers only procured the appropriation to be used and paid over with the purpose and intent that he, Beavers, was to use part of that money, Beavers would be guilty of a crime under section 1781. Assuming that Beavers never made a promise to the Dent-Brandt Mfg. Co., but upon the contract he made for the purchase of those cash registers Beavers used his influence to see to it that out of the appropriation made, part of that money was paid over to this Dent-Brandt Mfg. Co., with the intent that part of it was to come back to him, then Beavers was guilty of a separate and distinct crime under section 1781.

It is charged in the first count of the indictment that such a contract was made, and that Beavers did, out of the money ap-
55 propriated for the payment of those cash registers, actually receive $810, and that that money Beavers received knowing that it was part of the money appropriated by the United States for the purpose of paying for such supplies.

Now, then, there is a distinction in the fourth crime that is charged; the difference between procuring the contract to be made,

and aiding in the procuring it to be made. Your honor may deem at first that that is rather fine. I don't think there can be any doubt about the others being separate and distinct crimes, but your honor may think that it is rather fine and close-cut to say that it is one crime to procure a contract, and another crime to aid in the procuring of a contract, and I have no hesitancy in saying to your honor that I am strongly backed in this contention. The court of appeals of the State of New York said that an indictment which charged the procuring, and the aiding in the procuring, was bad for duplicity. But the court said a man could be guilty of the one without being guilty of the other, and that is the test.

Now we see that under that section it is a separate crime to procure the making of the contract, and a separate crime to aid in the procuring of the making of a contract. For instance, if Beavers said, "Upon consideration, paid to me, I will get you a contract from the United States Government for the purchase of 250 of those machines," or timing machines, and Beavers would procure the
56 United States to make a contract with the Dent-Brandt Mfg. Co., of course that is a crime of procuring a contract to be made. If Mr. Beavers said, "I will use my influence with Mr. Jones, Brown or Smith, so that he shall procure a contract to be made," Beavers is guilty of aiding in the procuring of a contract, and the proof which would prove the procuring, would not prove the aiding in the procuring. The proof which would prove the aiding in the procuring, would not prove the procuring of the contract. And where the same proof will not prove the crime under one section of the provision of law the indictment is bad for duplicity.

Now, for those reasons that in the first count of the indictment, as well as in the second, third, fourth, fifth and sixth, there is charged more than one separate crime under one provision of law, the indictment is bad for duplicity.

We respectfully ask the dismissal of the complaint for failure.

The COMMISSIONER: Upon that question I shall reserve my decision. Go on.

Mr. STEUER: With respect to the warrant. We say that there is no charge, no sufficient statement of a crime in the warrant, and that it is necessary for the crime to be cited in the warrant, otherwise the warrant itself must be vacated and set aside.

I assume that the use of adjectives—it is thus understood in law—that the use of adjectives in an affidavit does not help to characterize the crime. For instance to call a name is not to make it that. That is a mere conclusion.

In the warrant it is stated that, commencing on the 22nd
57 day of July in the year of our Lord one thousand nine hundred and three, the grand jurors found this indictment for having on the 25th of July, 1900——

The COMMISSIONER: Do I understand that you are attacking the warrant issued in this proceeding?

Mr. WISE: You have the wrong warrant. That is the eastern district.

Mr. STEUER: I referred to—we are complaining of the warrant in the eastern district.

Mr. WISE: Admitting that the warrant is attached to the complaint; it does not make any difference at all.

Mr. STEUER: Your honor will observe that in Mr. Little's affidavit he refers to the warrant as a source of information.

Mr. WISE: Certainly, he makes an allegation in the complaint that an affidavit has been made and a warrant issued thereon, and based his information on that warrant.

Mr. STEUER: I want to say that that warrant is void, and being void it cannot afford any information.

Mr. WISE: But it was issued.

Mr. STEUER: Well, if that is all the effect of it, we don't care anything about it; but whether that warrant can be used as a basis of information by Mr. Little, then we would say, your honor, that that warrant is wholly void.

The COMMISSIONER: I don't regard the contents of the warrant as material.

Mr. WISE: In answering the argument of the defense as
58 to the attack upon the indictment, the first proposition which I shall observe is that where a difficult question of law like this arises as to the sufficiency of the indictment, unless the indictment is palpably worthless, the commissioner will leave that question to be passed upon, as ruled, by some court of higher authority. The commissioner is aware of the many decisions to that effect. But I do not think that there is any serious question of law involved here, or that the argument of the gentleman as to duplicity bears much weight, and I believe that if we are required, or have an opportunity, that we can submit a brief which will be equally forceful to his in showing that there is no duplicity in this indictment. If we had charged a member of Congress under this section with having attempted to procure and having procured, and having paid for procuring, there might be some question as to whether or not there would not have been some duplicity in the indictment. But this indictment is to be read as a whole. If there was a bare assertion in the indictment that on a day certain, somebody gave the defendant something and it stopped there, it would be a ridiculous indictment on its face. What did they give it to him for? They gave it to him, it is alleged for procuring, or aiding in procuring the commission of an offense under the statute, and it is absolutely necessary to show what offense he had committed in order to receive this money. You have got to read it altogether. It is not to be separated. We need not charge Beavers with any of
59 the three items that opposing counsel has so ably separated, and hold him on any one of them, and unless the three of them are stated together, there is no offense charged, and the statement of the three offenses together makes a complete state-

ment of exactly what offense is meant, without any duplicity at all. I think the commissioner will see that.

The COMMISSIONER: I will take your briefs on that. I think it is very important for a speedy termination of this case, for that question to be based upon.

Mr. BURNETT: Your honor, it seems to me that this matter ought to be disposed of without delay. If your honor will take the statute and read it carefully. It seems to be perfectly clear, omitting that which is irrelevant, that every officer or agent of the Government who directly or indirectly takes, receives, or agrees to receive, any money, property, or other valuable consideration whatsoever, from any person, for procuring or aiding to procure any contract, office, or place from the Government, or any department thereof, or from any officer of the United States, or from any person whatsoever; or for giving any such contract, office, or place to any person whosoever, and every person who indirectly offers—so that applies to the briber, not the bribee—now, any agent of the Government who directly or indirectly takes, receives, or agrees to receive, any money, property, or other valuable consideration from any person, for procuring or aiding to procure any contract, office or place—There is but one offense in that whole statute.

The indictment might have alleged in this form, "That an officer or agent of the Government did take or receive" (or he might
60 have put it in the other way, "That he agreed to receive and did receive," and undoubtedly that would have been a good indictment, if either the one or the other would have been proved on the trial to be good; by proving either one of the alternatives of a statute the indictment is good. That is always the law of criminal procedure, or criminal pleadings. Now, therefore, I claim that if right, there is but one offense, the offense of agreeing to receive or receiving and you may charge either or you may charge both, and if you prove either, the offense is committed. It sets forth the offense and the penalty; two years' imprisonment, and not to exceed $10,000 of fine. That seems to be all there is to it.

The COMMISSIONER: I should like, in view of the questions raised, to consider the briefs to be submitted.

Mr. BURNETT: If your honor please, I do earnestly, on the part of the Government, protest against these delays. Large interests are involved. The people at large are interested; the Government is interested; public justice is interested. This question should be promptly determined, and the case proceeded with vigorously. It seems to me that oral argument ought to be sufficient.

The COMMISSIONER: The matter of the sufficiency of the indictment as evidence has got to be considered, and the indictment itself.

Mr. BURNETT: And yet, if your honor please, the Supreme Court of the United States held that even where the indictment is defect-

ive, the Government may supplement the indictment by
61 further proof. That is not sufficient for the dismissal of proceedings. If there is any inconsistency or conflict in the statements of the indictment, all we need in that indictment is to substantially state the crime. It need not be technically drawn, as the court has said. It is *prima facie* evidence before you. In these cases strict technicality is not required.

Suppose, if your honor please, that there was doubt in your mind as to whether or not there was duplicity in the indictment. Is your honor going to pass on this indictment to the extent that a judge would on the bench on a trial? Is not that the proper question to raise there?

Briefs to be submitted September 16th inst.

Examination adjourned until Friday, September 18th, 1903, at 10 o'clock a. m.

62 UNITED STATES
vs.
GEORGE W. BEAVERS.

NEW YORK, *September* 18, 1903.

Met pursuant to adjournment.

Present: The commissioner, Mr. Burnett and Mr. Wise, for the Government. Mr. Steuer; for the defendant.

The COMMISSIONER: I have come to a conclusion in this matter. I shall deny your motion to dismiss. I have examined your brief very carefully, but in the limited time, of course, I have not been able to prepare a written opinion if that should be desired.

The substance of my decision will be found in the case of Green *vs.* Henkel in the United States Supreme Court, in which a certified copy of an indictment is specially referred to as competent evidence. The court says, "In our opinion, such an indictment is *prima facie* good and when the copy of it is certified by the proper officer, a magistrate, acting pursuant to section 1014 of the Revised Statutes, is justified in treating the instrument as an indictment found by a competent grand jury."

The objection to the sufficiency of the indictment I do not find to be well taken. Following the decision of Judge Brown in the Dana and Green cases and the case of Green *vs.* Henkel, from which I
63 have just quoted, it seems clear to me that a certified copy of an indictment may be received in evidence and taken as *prima facie* proof of the facts therein contained. It is to be given weight according to the nature and character of its averments and the facts and circumstances which it sets forth. It is, therefore, in the sound discretion of the commissioner to determine, in the first instance, what weight it shall be given as evidence. If then the indictment contains a clear and sufficient statement of facts

constituting the offense charged, it is to be accepted as evidence of these facts.

The question that then presents itself is whether testimony which is merely contradictory of the facts stated in the indictment will suffice to overthrow the presumption of probable cause raised by the legal evidence of facts contained in the indictment. The question of actual guilt is not before the commissioner, but the question of probable cause. In both the Dana and Green cases, decided in this district, the indictments were criticised. In the one case the indictment was held to be altogether bad, and in the other case, insufficient in its statement of facts and circumstances to justify removal. Another feature of these cases, and also in the case of Terrell, decided by Judge Lacombe, is that it was sought to remove the defendants from their homes to far distant places for trial. This feature is enlarged upon in each of the opinions rendered. It would seem to be left, therefore, to the sound discretion of the com-
64 missioner, and of the court to determine what is "a proper case" to use the language of the decisions in which to permit a prisoner, under an indictment in another district, in a proceeding for his removal to that district for trial, to introduce evidence merely to contradict the statements of fact contained in the indictment. If, in the exercise of such discretion, the commissioner errs as against the defendant, the case may be reviewed by the court and sent back with further instructions.

The motion is denied.

Mr. STEUER: To that we except. We now respectfully demand that the prosecution announce the names of the witnesses that appeared before the grand jury upon the finding of this indictment.

Mr. BURNETT: This is declined.

Mr. STEUER: We ask your honor to instruct the representatives of the United States Government to announce those names.

The COMMISSIONER: I decline to do so.

Mr. STEUER: To that we except. We call Miss Wren as a witness.

Mr. BURNETT: Has she been subpœnaed to come, and where does she reside?

WILLIAM KLEIN: sworn for the defense, testified as follows:

Examined by Mr. STEUER:

Q. Where do you live Mr. Klein?

65 A. College Point, Long island.

Q. What is your age?

A. 21½ years.

Q. How are you employed?

A. I am employed as clerk in the office of Morgan & Seabury.

Q. Do you know Miss Wren?

A. I do.

Q. When did you last see her?
A. Yesterday afternoon about one o'clock.
Q. And when, prior to that, did you last see her?
A. It was on the 16th of this month.
Q. At the time when you last saw her did you leave any paper with her?
A. Yes, sir.
Q. What was it?
A. A *subpœna duces tecum*, and a subpœna for her personal appearance at the examination in this court.
Q. Today?
A. At this hearing.
Q. For this morning at 10 o'clock?
A. Yes.

(By Mr. BURNETT:)

Q. When was that?
A. On the 16th.

(By Mr. STEUER:)

Q. Where did you see Miss Wren when you left with her the subpœna?
A. I saw her in the office of the district attorney.
Q. Whereabouts?
A. In room 11 in the Post Office building in the borough of Brooklyn.
Q. From whom had you secured that subpœna?
A. From Commissioner Hitchcock.
Q. At that time did you leave with her anything outside the subpœna?
—. I left with her $4.
66 Q. For what?
A. For her witness fees to appear at this hearing.
Q. Did Miss Wren say anything to you at the time when you left that paper with her?
A. Well, she said that she would not accept the money until she had seen District Attorney Youngs.
Q. Did she see District Attorney Youngs in your presence?
A. Well, she went into his private room and came out again. She did not see District Attorney Youngs in my presence.
Q. Did District Attorney Youngs then come out to see you?
A. Yes, sir.
Q. Did he say anything to you?
A. He said to me that I should take those subpœnas back, and I said that I would not; I had served them on Miss Wren: and then District Attorney Youngs said, Well, Commissioner Hitchcock has no authority to issue subpœnas for witnesses in the eastern district, and I replied that I served the subpœnas. He then said, Well, you have served nothing: You have served pieces of paper. I then re-

peated that I had served these subpœnas, and then he asked Miss Wren whether she had received—had taken any money. I then interposed that I had tendered her the fee, and it was at the time lying down on her typewriter desk.

Q. She had a table there, did she?

A. She had a desk.

Q. At the place where you served her?

A. Yes, sir.

67 Q. And you offered this money in currency to her?

A. Yes, sir.

Q. United States currency?

A. Yes, sir.

Q. And that was permitted to remain at her disposal on that desk?

A. I laid it on her lap and it fell on the floor.

Q. And did these subpœnas call for her appearance here this morning at 10 o'clock?

A. Yes, sir.

Objected to that the subpœnas are the best evidence of their contents.

Q. Where is the original subpœna, Mr. Klein?

A. I have it (producing).

Q. And where is the original subpœna for the appearance of her person?

A. Here (producing).

Mr. STEUER: Now I offer these two subpœnas in evidence. Marked Exhibits 1 and 2.

(By Mr. BURNETT:)

Q. Do you know what position Miss Wren occupies in the office of the district attorney in Brooklyn?

A. She was writing on a typewriter every time I saw her.

Q. She was employed in his office?

A. It seemed so.

Mr. BURNETT: I suggest now, Mr. Steuer, that this same question probably will come up further in another form and if you can it might as well be all covered at the same time.

68 Mr. STEUER: That I should complete the evidence with reference to the other witnesses.

Mr. BURNETT: Yes.

Mr. STEUER: I will do that.

Mr. BURNETT: You have subpœnaed the Postmaster General in Washington and you have served the district attorney himself, and if you will cover the whole ground we will present the whole matter. It seems to me that the whole question can be discussed and presented to your honor at one time.

The COMMISSIONER: Subpœnas are signed generally by the commissioner in blank, as was the case here, and upon the application of either the Government or of an attorney, and are then filed in as the parties themselves see fit.

Mr. BURNETT: I have made the suggestion that he make his proof as to the whole question. He has had his subpœnas served on the district attorney and also on the Postmaster General, whom I in this hearing represent before your honor, and I want to have the question presented fully to your honor if you desire to hear any authorities upon it, and dispose of the whole matter at one time.

The COMMISSIONER: My understanding is that the subpœna of the commissioner does not have any force outside of the district. I may be mistaken about that.

Mr. STEUER: I think your honor is in error in respect to that.

(By Mr. BURNETT:)

Q. You hold no official position Mr. Klein?

A. No, sir.

69 Q. You were not appointed by any judicial officer to serve these subpœnas?

A. No, sir.

Q. You acted simply as a private individual under the instructions of counsel for the accused?

A. Yes, sir.

Mr. BURNETT: I think we can cover the whole ground by stipulation.

It is admitted that a subpœna, in form, signed by the commissioner, was served upon William J. Youngs, who is the district attorney for the eastern district of New York, in the eastern district; and also a *subpœna duces tecum*, signed by the commissioner.

I do not think that any of these *subpœna duces tecum* are proper in the manner of service, but we admit that such a paper was served upon Mr. Youngs in the eastern district.

We admit, further, that there were similar papers served upon the Postmaster General to appear and produce certain documents and papers of the Postmaster General's office in Washington. That paper was served in Washington, and that was served by a deputy marshal of that district.

Mr. STEUER: We, of course, have served Inspectors Little and Oldfield for the last hearing and then they disappeared, but if the subpœna is good then it holds throughout the entire examination. If the subpœna is not good, of course they never were subpœnaed. You will remember that Mr. Little was on the stand and the reason that the interrogation with respect to him was interrupted, was because I was to call him as our witness. The record discloses that.

70 Mr. BURNETT: We make no question about that. Were they served in this district?

Mr. STEUER: Yes, sir.

Mr. BURNETT: Then that does not fall in the same category and will come up as another question.

Now, is there anything more you want as a statement of facts?

Mr. STEUER: No; that is all.

Mr. STEUER: Now I do not like to quarrel with the finding of the commissioner with respect to what is held in the Greene case, but if I recollect the history of the case correctly it is authority for the very proposition under discussion now. That case has its distinctive branches. There was no reversal of anything that Judge Brown said on the consideration of the original application for the removal of the accused. The application when it came up, as your honor correctly stated, was sent back on the ground that testimony had been offered to the commissioner for the purpose of rebutting the presumption raised by the introduction of a certified copy of the indictment. That testimony was rejected, and because of the fact that the commissioner failed to receive the testimony the proceeding was remitted to the commissioner. After it was remitted to the commissioner then he took the testimony that was offered on behalf of the defence so as to show absence of probable cause of guilt, and he made a determination that there was reason to believe
71 that a crime had been committed, and that the accused had committed that crime.

Now in that case, if you will permit me to give the history of the case correctly I will come to the direct question. After that determination had been made then it went to the district judge on review and the district judge said that after the commissioner's finding based upon evidence he would not interfere. That was reviewed before the Supreme Court and that was affirmed, but nothing that was done upon the original question as to whether or not the commissioner is bound to take testimony was in the slightest degree interfered with.

The COMMISSIONER: The Supreme Court expressly states the question is not before it as to that, because testimony had been taken.

Mr. STEUER: That is the point. What I want to emphasize is that the second determination was in no wise—if you can say that it affirmed Judge Brown, it certainly did not reverse him in the original application.

Now in that case subpœnas were issued all over the country and these subpœnas were responded to. This indeed is the first instance where the Government has taken the position of depriving a man of the opportunity to prove at the place where every decision in this district says he should have his preliminary hearing; that is the first instance in which the Government has made this stubborn effort to suppress the evidence which would show that there is not only not probable cause of the guilt of an accused, but there is no
72 possibility of establishing his guilt.

Now the practice we are to pursue is not any practice defined

by a Federal law, except that the Federal law by a special enactment adopts the practice of the State in which the particular district is situated. In other words, we follow the practice of the State of New York, and your honor in issuing subpœnas takes the position of a committing magistrate of the State of New York, and wherever the committing magistrate could issue a subpœna in just that locality can your honor issue the subpœna. Now under section 608 of the Code of Criminal Procedure the subpœna of a committing magistrate goes all over the State of New York, and so the subpœna issued by your honor, by that enactment giving to your honor the power to issue where he issues, goes all over the State of New York.

Now Miss Wren, under the testimony in this case, was subpœnaed across the bridge. William J. Youngs was subpœnaed across the bridge. We propose to show by Miss Wren that there was no testimony offered to the grand jury upon which they could found any indictment. We propose to show by Mr. Youngs that he has in his possession this contract that they claim was under this fraudulent agreement. We propose to show that Mr. Beavers had absolutely nothing to do with the making, procuring or aiding in the making or procuring of such contract, and we cannot conceive who it is that the Government by this means seeks to shield under the guise of a prosecution
73 against Mr. Beavers. Somebody else is withheld, but if we are put to it; if they really think there is such a thing as a case we propose to show that so far as Mr. Beavers is concerned there is not only lack of probable cause to believe he is guilty, but it is a clear case of absolute innocence. Why is it that the Government, admittedly in possession of all this testimony, seeks to suppress it when they say they want this hearing to go on from day to day? You recall to mind that I said I would remind the General of that expression. *How* we are here ready to go on from day to day. Why pocket the evidence? Why not disclose it when we are ready and willing to be bound by it. When the process of the court runs against these individuals and they practically commit a contempt of court by failing to put in an appearance when properly served with a subpœna? I say there is no case on record where it has been held that the subpœna of a commissioner does not issue in the State; and I say there is no instance where the Government has ever seen fit to take the position of suppressing evidence, seeking to remove a man because he is here ready to prove his absolute innocence, and we ask that these people be directed to take the stand and testify and answer such questions as are relevant upon this inquiry.

Mr. BURNETT: Now if your honor please, this is a very simple matter. This party has been duly indicted in the eastern district of this State for the violation of a United States statute. Whether he is guilty of the offence or not — should there be tried out
74 according to the forms of procedure under the judicial system enacted by the Congress of the United States. Your honor

is simply a committing magistrate sitting here to see whether there is probable cause shown for the removal of the party, for a commitment and order of removal to that district for trial. You are not here to try the case. You are not here to hear the evidence to be produced to establish his innocence or guilt. All just minded people would hope that Mr. Beavers would be able to establish before the proper tribunal, absolute innocence. The Government is quite as anxious to protect loyal and faithful servants as it is to prosecute and condemn those who betray their trust, but when they are satisfied and upon examination find *prima facie* evidence to show that those servants have been unfaithful, then it is the duty of every officer of this Government to see that that unfaithful servant is punished, and every officer of the Government is derilect in his duty when he does not bring his utmost power to bear in punishing the guilty.

Now if your honor please, there are pretty broad questions involved just here and now outside of your honor's powers in issuing *subpœnas duces tecum*. There is the general question of the relative powers of the Government. The relations of the judicial power to the executive in the administration of the Government. The Government is divided into three great powers—the executive, the legislative and the judicial, each independent within the scope
75 of its duties of the other. One cannot usurp the functions of the other. That has been fully considered by the Supreme Court itself. Positions have been taken by the Executive, the President of the United States, denying powers of Congress, denying powers of the judiciary to transgress those powers confided by the constitution to the Executive. Now when the executive officer, the President of the United States and his agents and servants are performing their functions even the judiciary cannot step across that line and undertake to interfere with the executive action. It seems to me it is well to consider that here. I do not know where it has been better treated than in some State cases. In a review of several of these cases in the Albany Law Journal the elementary principles involved are very well stated.

(Reading the article referred to from vol. 31 of the Albany Law Journal.)

Now there are also some very interesting cases in the State of New Jersey. These all pertain to the governor where the courts have held that he cannot be called on, nor his agents through whom he acts, but I need not go further on that ground.

Therefore, if a governor in a court of his own State cannot be called in, nor his agents through whom he acts, how much more does it apply to the President of the United States and his agents through whom he acts.

76 Then your honor, turning to the next point of the duties and powers of a commissioner let me say a single word. Commissioners were creatures of the law created at an early day. I think under the old judiciary act of 1789. There are not many

statutes—there is but one really; that cover the ground, viz: section 627, authorizing the appointment of the necessary number of commissioners. Their powers are not covered by statute nor clearly defined. The case of the United States against Alreid in the 155th U. S., page 591, is the fullest on the part of the Supreme Court in its discussion of the functions and powers of commissioners that I have been able to find. Their powers are largely implied. Their judicial proceedings are not sessions of courts and a commissioner is not a court within the meaning of the third article of the Constitution.

The COMMISSIONER: That is well understood.

Mr. BURNETT: That has been decided expressly by the Supreme Court of the United States; that their functions are similar to and of the same general nature as a referee in bankruptcy and a master commissioner, except in this——

The COMMISSIONER: They are arms of the court.

Mr. BURNETT: Your honor has hit it exactly; simply arms of the court and instruments of the court. Except perhaps where there has been a special duty assigned to them, as in section 1014 where they are named as one of the officers to carry into effect the duty of removal of persons from one district to another to answer for a crime, and they are also I believe given the power to
77 examine in the Chinese exclusion cases, there are certain duties devolve upon commissioners that they may perform and they have their special powers by statute outside of being simple arms of the court.

In the 158th U. S. the court held that a preliminary examination before a commissioner of the circuit court is not a case pending in any court of the United States.

The COMMISSIONER: I remember that case.

Mr. BURNETT: And what followed was a consequence. The court says among other things, that a commissioner is not a judge of a court of the United States within the constitutional clause. He is simply an officer of the circuit court, appointed and removable by that court. A preliminary examination before him is not a proceeding in the court which appointed him, or in any court of the United States. Under section 1014 an examination may be had not merely before a commissioner, but also before any judge, justice or judge of the United States, or before any chancellor, judge of a State court, justice of the peace, mayor of a city or other city magistrate, and it cannot be pretended that one of these State officials while conducting a preliminary examination or investigation is holding a court of the United States. Technically we speak of an examining magistrate and not of an examining court. The distinction is recognized in the statute (1014) by which sundry judicial officers conduct an examination; also 911 which provides that all writs and pro-
78 cesses issuing from the courts of the United States shall be under the seal of the court from which they issue and shall be signed by the clerk thereof, but a commissioner, like a justice of

the peace is not obliged to have a seal and his warrants may be under his hand alone.

Now following that and based upon that the question came up before the Controller of the Currency and he rendered this decision: The serving of a subpœna issued by a United States commissioner for a witness residing outside of the district of the commissioner is not authorized by law, and a deputy marshal is not entitled to compensation or mileage for such service, and he bases his conclusion logically, as I think, on the decision in the Supreme Court. He says section 876 of the Revised Statutes under which the claim is made by the deputy marshal for fees in the service of the subpœna in question provides that subpœnas for witnesses who are required to attend a court of the United States in any district may run in another district, but it is now well settled that a United States——

The COMMISSIONER: There is a limitation in regard to distance there too, is there not?

Mr. BURNETT: That as to subpœnas for courts in civil cases, one hundred miles. He continues, "It is now well settled that a United States commissioner is not a court of the United States within the meaning of the section, and a preliminary examination before him is not a proceeding in any court which appointed him, or in any court of the United States."

79 In the 16th Attorney General's Opinions, page 24, it was held that the defendants in a suit on a distiller's bond for the recovery of internal revenue taxes under sec. 3353, R. S. have no legal right to the use and control of the documents or other papers on file in the office of the Internal Revenue Department upon which the commissioner acted in making the inquiries and determination contemplated by section 318.

The COMMISSIONER: That goes to the other branch?

Mr. BURNETT: That goes to the other branch.

Now a single word your honor. There is no disposition on the part, I am quite sure, of any officer of the Government to do any injustice, to exercise any unfair advantage in the prosecution of any criminal or any person charged with a violation of the statute. But here is presented the broad general proposition, which your honor must consider in the orderly administration of justice. Supposing that it should be held that a conspiracy—persons charged with a conspiracy in these post office frauds, and that one party resided at Detroit, as I believe he did, and another at Toledo, and say, another resided in California, and that each one of these defendants should there demand a full hearing, and that the departments at Washington should take up their records and travel to these points all over the land and produce those records on preliminary hearings,—not on a trial—these gentlemen could block the wheels of administration. You cannot tell—no officer can tell—how essential the records may be in the administration of these great offices, nor what would become of these records in

80 travelling about the country, or how essential they would finally become in the trial of the accused. Your honor can

see what the inconvenience would be to the administration of the Government in the executive functions. Aside from all that, here is this consideration—coming back fundamentally; a great deal has been said about the Green & Gaynor case and sending it back by Judge Brown for re-hearing before Commissioner Shields. I differ somewhat with Judge Brown—I argued those cases before him—in some of his determinations. I think the case was fundamentally right: On one broad ground, his decision is right, and perhaps technically, or perhaps a little broader than technically, he was right in sending the case back to Commissioner Shields. Commissioner Shields, under the agreement of the district attorney of Georgia who was here on the preliminary examination—Mr. Erwin, a very able lawyer—and the head of my criminal department, Mr. Baldwin, were satisfied that they had no right to go into evidence for the defense at all upon the hearing; where there was identification and the introduction of a certified copy of the indictment. Judge Brown thought—and I am not sure that he was right but am inclined to think that he was—that that was going too far, that he had no right to shut the defense off at that point, that they might go into evidence. The character of the evidence is another matter.

The COMMISSIONER: In a proper case.

Mr. BURNETT: In a proper case: That is the language he
81 uses. Therefore Commissioner Shields had gone a little too far. It was not his fault; he followed what he believed to be the rule, that the indictment was conclusive, and about that the Supreme Court has never yet decided, never yet said exactly whether it might not be conclusive in the preliminary hearing, but it was sent back because he refused to hear any testimony.

Now, your honor, my judgment about that is this, in the preliminary hearing. I believe that the defendant, when the identification has been made, and a certified copy of the indictment has been produced, an indictment that substantially states an offense against a law of the United States—it may be not quite technically, but if its allegations are of a substantial character——

The COMMISSIONER: I think I have covered that.

Mr. BURNETT: Yes: I am only stating my general ground. That when that is introduced then what arises? That the defendant may then introduce evidence to what effect? He may introduce evidence that will challenge the indictment on two or three grounds. I don't know but that was well illustrated by Judge Evans in a Kentucky case. In that case a party had been indicted in Texas for a violation of the interstate commerce act, and they applied to Judge Evans in Kentucky for an order of removal. The magistrate committed the party. Then this judge took up the record of the whole proceeding and on the face of that record he said, This is an improper indictment. The court in Texas has no cognizance of this offense. The violation under the
82 interstate commerce act was at the point of shipment and not at the point of delivery, and, therefore, that court was with-

out jurisdiction and I refuse the order. Now, that same question might have been considered by the magistrate in meeting the indictment, that there was no jurisdiction by the court, that the statute of limitations had run. I believe they may go one step further, as some of the cases have held—and about that I am not quite sure, because I propose to be absolutely frank with the court and with our adversaries—perhaps one step further. They may produce proof to show that the party was not in this country at the time, that the offense could not have been committed by the accused—going to the question, absolutely, fundamentally, of probable cause and alibi—perhaps that far. And yet I do not think the cases are quite clear about it, but I am inclined to think that that would be right. But beyond that, I do not believe, in these preliminary hearings, they can come. What would be the result? The result would be that a criminal might commit an offense in another district, in this district, if you please, and escape to California, and the defendant would demand that all the witnesses be transported from this city and from Washington to that preliminary hearing. That is only on the question of probable cause and try out the case on its merits—every criminal that should be arrested in the United States. Now, that is not reasonable construction of judicial procedure. That is not reasonable inter-
83 pretation of what Congress meant in establishing its system of judicial procedure. It would be nullifying the criminal laws of the United States, and courts must give reasonable interpretation to these rules of procedure. We know, your honor knows, in that Green-Gaynor case, that when the door was opened the commissioner then did not know how far he was compelled to go and therefore when the case was returned him he opened the door wide, and we had a three months' investigation and hearing: witnesses brought from all over the United States. Now, is that to be the case, and in all cases, that we are to go into a full hearing and trial on the mere arrest of a party to be taken to the place where he is indicted? It is not quite true, as my friend says, that a party is always entitled to a hearing. Take it in this State. If a man is indicted in Erie county and he is arrested here, and a warrant brought here, he is taken to Erie county. No hearing here. Your honor knows what the practice is. In any case, within the discretion of the district attorney, there may not be any hearing at all, in a criminal charge, any preliminary hearing. He may go directly to the grand jury. It is not a constitutional right that a party shall have, under the United States system of procedure, a preliminary hearing.

The COMMISSIONER: Can't you take up the question of the subpœna and dispose of that rather than go into an extended discussion of this.

Mr. BURNETT: Well, it seemed to me—and for that reason—it appeared that the attorney for the defendant covered the ground
84 and I tried to do the same. I have said all I have to say.

Mr. STEUER: May it please your honor, I think that the

prosecuting counsel has confounded in his able efforts the right to issue the subpœna, and you will bear in mind that he read so as to illustrate that a letter to the Chief Executive of the country could not be produced under compulsory process, and you have been referred to the Aaron Burr trial, where it was attempted to compel President Jefferson to produce a letter, and the President did not produce the letter; and in that case Chief Justice Marshall went further than it was then deemed to be the law, and said that even the Chief Justice could not, if it were established that a document was pertinent to the issue, withhold that document. Now in this case, that document is proved to be extremely material.

Mr. BURNETT: Upon a full hearing before the court.

Mr. STEUER: That is the point. I say, we have already had the full hearing of the court, because they allege that the document is extremely material and pertinent. Now, we don't challenge their allegation and we don't dispute the fact, but relying upon their allegation, accepting it as true, we say produce the document or a copy. Now notice what Little says: "Deponent further says that the sources of his information are the official documents with reference to the making of the said contract and the said transactions, on file in the records of the United States of America and in the Post Office Department thereof, and letters, communications, from the Edward J. Brandt-Dent Company with reference to the said contract."

85 The COMMISSIONER: And what else?

Mr. STEUER: And the indictment. Now, those letters, those documents, that he says enabled him to see that there is probable cause for believing that Beavers is guilty of the offense set out in the indictment: those are the papers and the letters and the documents that we want here.

Mr. BURNETT: Now your application is for what purpose? For an order on motion to compel the witness' presence and show cause why he should not be punished for contempt?

Mr. STEUER: We don't want anybody punished, General. We want the use of documents to show the making of the contract. We are making proof of the service of process. You are arguing that we have not served process. If the commissioner finds that we have served process that was binding upon the party served, then we apply for the proper remedy to see that the commissioner's order is fully carried out and obeyed. That is the proposition.

The COMMISSIONER: That is what I understand to be the only question before me at the present time.

Mr. STEUER: Now, Mr. Commissioner, with respect to the only question before you, and that is the only reason why I do not completely answer the proposition made by my adversary—I say with absolute confidence that every citation to which he has called attention, bears out the proposition that these subpœnas were properly issued and properly served. The question that arose in each of

these cases was whether an indictment which charged a per-
86 jury committed in a court was a good indictment if on the face of the indictment it appeared that the perjury was committed before a commissioner.

The COMMISSIONER: I do not think we are at all at odds about this jurisdiction of the commissioner or his authority.

Mr. STEUER: Not at all. Now, that being so, we come
87 back to the original proposition. From where is it that the commissioner derives his authority in this district? Why, the special enactment is that you are to follow the law practice and procedure of the State court, but by special statute in the State the commissioner, or rather the committing magistrate whose place you take here, is authorized to issue process, subpœnas, all over the State. Now, how can there be any doubt? Are you going to draw any distinction between the various districts and the State? There is no such distinction at all. There is not any district limit upon your authority, because if there was any such limit it is for them to show it to you. We show you absolute authority to issue subpœnas all over the State, because every case says that your honor takes the place of the committing magistrate in the State in which the district is situated. Now, then, we show you that the committing magistrate's power by section 608 of the New York Code of Civil Procedure, is to issue subpœnas all over the State. Certainly it is not the position in the Green case where the subpœna was issued to be served——

The COMMISSIONER: I do not think that that is at all material. The witnesses appeared from all over the country without objection. The question is, in my mind, simply whether the subpœna issued by the commissioner in this district is good outside of the district, and I think it is not.

Mr. STEUER: What is it that causes you to come to the conclusion that your subpœna does not run outside of your district?

88 The COMMISSIONER: The General cited some authorities to that effect.

Mr. STEUER: He did not cite any.

The COMMISSIONER: I decided after investigation that that is the fact. Of coure, in this case, if a subpœna served within this district is refused to be obeyed the commissioner has no authority to punish the witness or to enforce the presence of the witness, but that question is presented by the commissioner to the court for its order. As the General has stated, the functions of the commissioner are limited. They are determined by some of the decisions of the court and the commissioner refers matters of disobedience of his orders, to the court for such action, as the court may deem proper.

Mr. STEUER: But the point that I differ with your honor on is that that procedure is simply limited to this district. The district judge is not limited in issuing the subpœna to this district, and if the arm of the court is not co-extensive with the court, what is the use of having the arm?

The COMMISSIONER: I think you are wrong about that, Mr. Steuer. I do not believe that service of my subpœna is good in the eastern district, good outside of the southern district of New York.

Mr. STEUER: All that would be essential, then, for the purpose of nullifying the provisions of section 614 would be that the district attorney in this department should see to it that the witnesses are outside of the district.

89 You see I am limited to issuing the subpœna under the law; but I have been unable, and Messrs. Morgan & Seabury have made a most exhaustive examination of the law on the subject and they have been unable to find a case, and I submit that the *district attorney has not cited a case in which it was held, the sub*pœna was limited to the district in which it was issued.

The COMMISSIONER: I don't care to cite the American and English Encyclopedia as an absolute authority, but you will find the question discussed there and will find that as authority besides the authorities quoted by the district attorney.

Mr. STEUER: The district attorney cites cases, first, to show that a chief executive cannot be subpœnaed.

The COMMISSIONER: This we will not discuss here.

Mr. STEUER: Second, he cites cases in which it was held that the proceedings before a commissioner are not proceedings in a court. He has cited no cases, and has called attention to no case, and I would like to challenge the production of any case in which there is even an utterance by way of dictum, by which the subpœna of the commissioner does not run outside the district. I ask you to name the volume in which it appears.

Mr. BURNETT: Your ears are not very sharp.

The COMMISSIONER: I think you can stand on that decision. You can take your exception.

Mr. BURNETT: Now what disposition does your honor make?

The COMMISSIONER: What is the situation in regard to this?

90 Mr. STEUER: The situation is that they were subpœnas issued by you returnable at the last hearing; that they were in court at the last hearing. You recall Mr. Little was present on the stand and gave testimony with respect to identity. We had started to cross-examine and the objection was raised that it was not proper. We intended to call him for our case. The hearing was adjourned in order that we may examine the question as to whether or not the indictment was bad for duplicity. And then the hearing was announced for this morning at 10 o'clock. We hold that those gentlemen are under subpœna and should appear here and testify. We desire to put them on the stand and examine them.

Are the facts as I stated them admitted, Mr. Wise?

Mr. WISE: They were subpœnaed to appear here on the last hearing, have not been subpœnaed since and are not here and under no obligation to be here. It was not directed by the commissioner, nor were instructions given that the witnesses should be

back here, and they are not here. If they had been subpœnaed they would have been here. Mr. Oldfield is in the employ of the Government at Washington. He is not going for the sum of $1.50, or at the pleasure of anybody to come running up here from Washington.

Mr. STEUER: This is not pleasure, Mr. Wise. If the Government is to be permitted to spirit witnesses away in this fashion and then come here and say, We want to be very generous to the defense, the Government never intends to deprived the defendant of any opportunity——

91 Mr. WISE: I deny any such imputation and throw it back in your face.

Mr. STEUER: Where are these people! Never mind. Where are these people!

Mr. WISE: If you want these people here get them in a legal way.

Mr. STEUER: The highest duty of the district attorney is to protect a defendant in his rights.

Mr. WISE: Then let the defendant apply to us to be protected.

Mr. STEUER: The defendant is to be protected in the absence of such steps. If you haven't learned that yet you have learned it now.

The COMMISSIONER: The hearing was on the 15th. An adjournment was then had to the 18th. As far as Mr. Little is concerned he answered on the 15th. There was no notice directed to him that he should appear on the 18th. He was not subpœnaed for the 18th. I don't see that the court can compel his attendance in any way.

Mr. STEUER: It was in the court as part of this proceeding. Now where is he for cross-examination. It was on the distinct agreement that he was to be called as part of our case that he was allowed to depart.

Mr. WISE: The court sustained our objection to your making our witness become your witness.

Mr. STEUER: It was stated by General Burnett that he was to be called as part of our case.

Mr. BURNETT: You are very loose in statement.

Mr. STEUER: I am not loose in statement. We have the original subpœna, and these people, I say, were taken away so they should not be served——

92 The COMMISSIONER: I don't think that is a proper statement.

Mr. STEUER: We had a subpœna signed by Commissioner Hitchcock. Where are these people that we want? We will show you that we have made every effort to subpœna them, every possible effort, and made it immediately. We applied to you before your honor left this court and had you sign it and it was directed to Little and Oldfield. We will make proof of our efforts to serve the subpœnas and the actual circumstances as they occurred on the last hearing.

The COMMISSIONER: That is on the record, Mr. Steuer.

Mr. STEUER: As to their leaving, there is nothing on the record as to that.

The COMMISSIONER: I shall not entertain any evidence to change this record.

Mr. STEUER: I don't want to admit such evidence. I wish to show that both of these men left the court before the close of the session, and then we applied to you for a subpœna, and have since made every effort for the purpose of serving that subpœna.

Mr. BURNETT: If that is the fact we don't need any evidence, if they left the court——

Mr. WISE: Mr. Little was not on the stand under any subpœna. He was on the stand for the Government.

Mr. STEUER: Will you submit that he was subpœnaed for the 15th, to start with?

Mr. WISE: Yes, both Little and Oldfield, if you say so, and they were in court.

93 Mr. STEUER: And that they both left before the close of the hearing?

Mr. WISE: That was on the 15th?

Mr. STEUER: On the 15th.

Mr. WISE: I don't know if he did or not.

The COMMISSIONER: I do not know if he left.

Mr. WISE: I would like to have it on the record that the commissioner was not requested to direct, nor did he direct, and with that on the record we will admit that they left before the hearing had closed.

Mr. STEUER: Then we applied to the commissioner for a subpœna which was actually granted against Little and Oldfield.

Mr. BURNETT: Have you got that subpœna here?

The COMMISSIONER: I do not believe any subpœna has been signed by me with the name of the witness inserted.

Mr. WISE: I will admit that the subpœna was signed by the commissioner with the names in blank.

Don't you want to put on the record that you made diligent effort to serve it?

Mr. STEUER: Yes.

Mr. WISE: Diligent effort has been made by a person above 18 years of age, and that he failed to serve it, and returned it.

Mr. STEUER: That is right; that will suit our purpose.

Mr. WISE: I suppose you will admit on the record also that Mr. Oldfield is not a resident of the State of New York?

Mr. STEUER: If you say that he is not.

Mr. BURNETT: He is a resident of the State of Maryland.

Mr. STEUER: We will call upon the district attorney to pro-
94 duce, pursuant to our notice, to produce served upon them, the documents, papers and requisitions and requests from local postmasters throughout the United States for permission to test the machines known as the Brandt automatic cashiers, manufactured by the Edward J. Brandt-Dent Co., and filed in the Post

Office Department between February 1, 1897, and December 1, 1900. And also the reports made by the local postmasters upon those machines, and which reports are on file with the postal department. And all letters, telegrams and other communications between the Edward J. Brandt-Dent Co. and the Post Office Department of the United States of America, as are with the department and under its control. And all contracts made between the Edward J. Brandt-Dent Co. and the Post Office Department of the United States of America, for the purchase of the Brandt-Dent automatic cashiers, and particularly for a certain contract for the purchase of 250 of the said machines, which is the contract alleged and referred to in the first count of the indictment.

Mr. BURNETT: My response to that is that I have possession of no such papers.

Mr. STEUER: The service of the notice to produce is admitted.

Mr. BURNETT: It is.

Mr. STEUER: Now we procured a subpœna for one Harry F. Burns who is a resident of this district, and also for one George F. Miller who likewise is a resident of this district; but each of these persons has been outside of the jurisdiction between the dates when we procured the subpœnas. We procured one for the 15th
95 and also one for this morning. Harry F. Burns is a teller of a bank and is on his vacation and nobody has been able to discover where he is.

Mr. BURNETT: What is your application?

Mr. STEUER: To have an adjournment to give us an opportunity to produce Burns and Miller, both of whom are material witnesses on behalf of the defendant.

Mr. BURNETT: Our answer to that, if your honor please, is that if they are outside of the district there is no reasonable probability of their securing their attendance by any subpœna from your honor; and, second, that to make an application for a subpœna for a witness, and to cause a delay on that account, there would have to be evidence here of the materiality of the witness to the issue before the commissioner.

Mr. STEUER: I think I can satisfy you that the nature of the evidence is very material, Mr. Commissioner, George F. Miller is the person who is mentioned in the indictment as the person who paid the money charged in the indictment to Mr. Beavers. Now, if we show by George F. Miller that no such payment was ever made by him, I take it that you do not want any more proof that that testimony would be very material. Now, with respect to the General's point that there is no probability of our being able to reach them by subpœna, we can make proof of that if he desires it. They both are away and each is expected back on Monday next.

96 Mr. BURNETT: If your honor please, I shall request right here now—on the application for that adjournment that he as a reason for the adjournment desires the attendance of these wit-

nesses—that he should show to the court on this hearing the materiality of the witnesses.

The COMMISSIONER: I think the witness material if he can prove that he did not pay the money.

Mr. STEUER: We propose to show by Burns that the testimony that was given—that there is no testimony such as is alleged in the indictment, as to the giving of a check drawn by Drakes to Beavers.

Mr. BURNETT: What do you mean no testimony; before the grand jury?

Mr. STEUER: That there was no check given as that which was alleged. I propose to show you the account of Drakes. He is in possession of that account and the facts controlling, and we propose to show that such testimony as he did give was wholly incompetent.

Mr. BURNETT: Given where?

Mr. STEUER: Before the grand jury.

The COMMISSIONER: The testimony, as I understand it, is merely to contradict the statements of fact contained in the indictment.

Mr. STEUER: They destroy the possibility of their existence as facts, because we propose not only to contradict them, but propose to show that they are the only persons who could give testimony on the subject. And even assuming Mr. Commissioner, that there was testimony for the purpose of contradicting the averments of the indictment, I think that the testimony ought to be received,
97 because I think this is a case which would come within your suggestion that "within a proper case" testimony should be received, and our being permitted to make the record at an early date so that the defendant should have the proper protection if by chance the commissioner should err.

The COMMISSIONER: I should prefer to meet these questions of proof on the hearing as they are presented. Your purpose is very sweeping.

Mr. BURNETT: Goes into the very foundation of the thing: whether your honor will go into the trial on the merits of this case—of the guilt or innocence of the accused.

If there are any other witnesses, or anything else that would cause any delay on that day, I want it now brought before you.

The COMMISSIONER: I ask Mr. Steuer to be ready to proceed with all his witnesses on Tuesday.

Mr. STEUER: If we, pending this examination, should come to the conclusion after examination of the authorities, Mr. Commissioner, that we have the right to apply to you for a subpœna for all the persons who did not answer the subpœnas that we served, we should like to have it understood that there is no way of going before the commissioner for the purpose of getting the process?

The COMMISSIONER: I believe you can apply either to the court or the commissioner for such process.

Mr. STEUER: But in applying to you you have determined that it is nugatory.

98 The COMMISSIONER: I think I should be advised of the purpose of the application for a subpœna.

Mr. STEUER: All right.

The COMMISSIONER: I have no objection to your applying to Judge Holt for a subpœna in this case and to be used outside of this district.

Mr. BURNETT: Your honor, it seems to me that a very good course that has been followed is when counsel applies for a *subpœna duces tecum*, to set out the name of the person they desire to subpœna and the materiality of the evidence, what they propose to prove and the materiality of the documents. I think that same course ought to take place here.

The COMMISSIONER: It has been the practice here for 25 years precisely, when a matter like this arose, for the commissioner to sign the subpœna in blank, and it is left to the discretion of the attorney to fill it out. The attorney does not always know who his witnesses are or may be.

Mr. STEUER: Did you, Mr. Commissioner, understand we were to apply to Judge Adams for subpœnas for only Burns and Miller?

The COMM-SSIONER: I understood you wanted to apply for subpœnas for people who did not respond to your subpœnas here this morning.

Mr. STEUER: That's it exactly.

Adjourned until Tuesday, September 22, 1903, at 10 o'clock a. m.

99 Ex. 2.

The President of the United States of America to Edmund H. Driggs, J. F. Oldfield, Frank E. Little, Miss Wrenn, Henry F. Burns, George F. Miller, Hon. William J. Youngs, Greeting:

We command you, that all and singular business and excuses being laid aside you and each of you be and appear in your proper persons, before Samuel Hitchcock, United States commissioner for the southern district of New York, at his office, room 78, United States court house and post office building, in the borough of Manhattan, city of New York, in the said southern district of New York, on the 18th day of September, one thousand nine hundred and three at ten o'clock in the forenoon of the same day, to testify all and singular what you and each of you may know in a certain proceeding now pending undetermined before the commissioner, wherein The United States of America is complainant, against George W. Beavers, defendant on the part of the defendant. And this you or either of you are not to omit under the penalty upon each and every of you of two hundred and fifty dollars.

Witness, Samuel M. Hitchcock, United States commissioner at

the city of New York, the 15th day of September, in the year of our Lord one thousand nine hundred and three.

SAM'L M. HITCHCOCK,
United States Commissioner.

[SEAL.]

MORGAN & SEABURY,
Def't's Attorneys.

(Endorsed:) Original—The United States *vs.* G. W. Beavers, Commissioner's subpœna, Returnable Sept. 18, 1903.—Morgan & Seabury, def't's attorneys.

100 The President of the United States of America to Miss Wrenn, c/o U. S. dist. att'y's office, Brooklyn, N. Y., Greeting:

We command you that all business and excuses being laid aside, you appear and attend before Hon. Samuel M. Hitchcock, United States commissioner for the southern district of New York at his office, room 78, United States court house and post office building in borough of Manhattan, city of New York, in said southern district of New York, on the 18th day of September, 1903 at ten o'clock in the forenoon to testify and give evidence in a certain action now pending undetermined before said commissioner for the southern district of New York, between The United States of America, complainant, and George W. Beavers, defendant, on the part of the defendant, and that you bring with you and produce at the time and place aforesaid all minutes, exhibits, records, stenographic notes documents and other papers and memoranda of any kind whatsoever made, received and taken at the inquiry of the grand jury of the United States of America held in the eastern district of New York, at the borough of Brooklyn, New York, during the month of July, 1903, in the investigation leading to the indictment alleged to have been found against George W. Beavers at said sitting of the grand jury aforesaid, in relation to the alleged Brandt-automatic cashiers, now in your custody, and all other deeds, evidences and writings, which you have in your custody or power concerning the premises. And for a failure to attend, you will be deemed
101 guilty of a contempt of court and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit two hundred and fifty dollars, in addition thereto.

Witness, Samuel M. Hitchcock, United States commissioner at the borough of Manhattan, in the city of New York, the 15th day of September, 1903.

[SEAL.]

SAM'L M. HITCHCOCK,
U. S. Commissioner, Southern District of New York.

MORGAN & SEABURY,
Def't's Att'ys.

102 UNITED STATES
vs.
GEORGE W. BEAVERS.

NEW YORK, *September* 22, 1903.

Present: The commissioner, Mr. Burnett and Mr. Wise, for the government, Mr. Seabury, for the defendant.

Mr. Seabury asks for an adjournment on the ground that it being a Jewish holiday, Mr. Steuer is not present; also on the ground that he has an application to present to the court to punish the witnesses served in Brooklyn, for contempt for failure to answer the subpœnas.

It being agreed that counsel for the defense will submit before a judge, before the adjourned date, the questions he desires passed upon with reference to all the witnesses under subpœna, so that the entire case can be taken up on the adjourned day before the commissioner, the commissioner adjourns the hearing until Friday, September 25, 1903, at 10 o'clock a. m.

103 UNITED STATES
vs.
GEORGE W. BEAVERS.

NEW YORK, *September* 25, 1903.

Met pursuant to adjournment.

Present: The commissioner, and counsel as at previous hearing.

The COMMISSIONER: Are you ready to proceed?

Mr. STEUER: On account of the motions now pending before Judge Lacombe, we think we should not be required to proceed.

The COMMISSIONER: I understand your suggestion is that you have made an application in regard to the Little matter before Judge Lacombe, and, as I understand it, there is a motion to *to* punish him for contempt, before Judge Lacombe, returnable on the 2nd.

Mr. STEUER: Yes, sir.

The COMMISSIONER: Now, at the last hearing it was stipulated that the motions in regard to the witnesses subpœnaed in the eastern district, whatever those motions might be, should be presented before to-day. Has that been done?

Mr. STEUER: Yes.

Mr. WISE: Has any order been served on Mr. Youngs and Miss Wren?

Mr. STEUER: The applications were made and Judge Lacombe endorsed the papers, saying, as there was sufficient time before the next date on which he would sit, he would prefer it be made on notice of motion instead of order to show cause, and here is his

original endorsement. That was made yesterday. Those
104 papers are out pursuant to that direction, for service.

Now, with respect to Mr. Little, Judge Lacombe thought an order to show cause was proper, and did make an order to show cause, and in that order directed that the district attorney disclose the whereabouts of Mr. Little at the present time.

Mr. WISE: The district attorney has told Mr. Seabury everything he knows about it.

Mr. STEUER: I am not authorized to speak for the court, but, as I understand it, the court is going to require the whereabouts of Mr. Little to be known so that he shall appear before the court and explain his absence.

The COMMISSIONER: Did you state to Judge Lacombe that the district attorney had agreed to appear specially and argue this motion before him?

Mr. STEUER: I did not. We are perfectly ready to have the district attorney appear, provided he will make service of these papers.

The COMMISSIONER: I understand the district attorney, irrespective of the service of papers, is prepared, and so stipulated that he would appear before Judge Lacombe on the argument of this motion.

Mr. STEUER: We have no objection to that if Judge Lacombe will hear the motion without service on Mr. Little.

The COMMISSIONER: Have you any other witnesses?

Mr. STEUER: Under subpœna, yes, sir.

The COMMISSIONER: Are they in court?

Mr. STEUER: I presume so, but we want to examine these witnesses in their order and develop our case naturally, and the
105 first person we want to call is Mr. Little, and after him Miss Wren. Now, we may be mistaken in our theory, but that we cannot determine until the evidence is brought before you. If we cannot introduce the evidence we hope to by Mr. Little and Miss Wren, we may be able to introduce some evidence, but we cannot judge of that until we have the opportunity to do that.

The COMMISSIONER: When is your motion in regard to the eastern district subpœnas set for?

Mr. STEUER: Second of October. Judge Lacombe would not receive anything until then. Our order to show cause is returnable the same day.

Mr. BURNETT: We have been ready at all times to inform the gentlemen of where we suppose Mr. Little's office is, which is in this city and in the Post Office building.

The COMMISSIONER: That is a matter to be disposed of before Judge Lacombe, of course.

Mr. BURNETT: It seems to me the time has arrived when this ought to be made in some sort of legal way and it ought to be presented in a legal way. You and I, when we studied law, found a very sensible remark by Lord Coke, "The law never doeth a vain

thing." Supposing we postpone these hearings and prolong and put them over from time to time to get the evidence of Mr. Little, and it should all the time be the fact that if Mr. Little were on the stand he would not be able to testify at all, then our work goes for nothing, and we do a vain thing. The old mode of procedure in these cases where a postponement was applied for, was to compel the party to produce an affidavit showing not only the mate-
106 riality, but wherein the materiality consisted, of the witness. In other words, to set forth what he expected to prove by the witness Then the court would not be frittering away its time in delaying for a witness who could not testify to these things, if present.

It seems to me the time has come now when we should require these gentlemen to state what they expect to prove by this witness.

The COMMISSIONER: There is a distinction there between a witness who has not been served and one they claim to have served. The contention here on the part of the defense is that they claim to have served Mr. Little and that he is in contempt of court. Now, under these conditions I do not think the question of the materiality of his evidence is so important as it would be if they were asking for delay because they had been unable to serve him. There, I think, they would, of course, be called upon to show that the witness was material, and give good reason why they had not produced him in court. Now, they have shown a case and have actually a motion on before Judge Lacombe, and an order to show cause why this witness should not be punished for contempt. I think that is a good reason for adjournment and I think that I should allow the defense some discretion in the manner in which they propose to present their case, and as they claim this does depend upon what they can obtain in the way of testimony from this witness and those from the eastern district who have been subpœnaed, I shall give them an adjournment. Peculiar circumstances have arisen here and with these motions pending I feel that they should have a reasonable adjournment. How much time do you desire?

Mr. STEUER: Two days after the day for argument, or, say, the next day. Judge Lacombe is going to sit on the 2nd, and if
107 he does not decide on the 2nd, we will come in and inform you of that fact.

Counsel for the defense asks for a direction that the witnesses Miller, Burns and Driggs, be directed to appear upon the adjourned day without further subpœna.

Mr. Driggs not being in court, counsel for the defense stated that they will raise no question about his not being in court to-day.

The commissioner directs the witnesses, Miller and Burns to be present on the 5th of October, at the same hour, and the examination is adjourned to Monday, October 5, 1903, at 10 o'clock a. m.

UNITED STATES
vs.
GEORGE W. BEAVERS. } (No. 1.)

NEW YORK, *October 5th*, 1903.

Met pursuant to adjournment.

Present: The commissioner. Mr. Henry A. Wise, ass't U. S. attorney, for the Government. Mr. William M. Seabury, for the defendant.

An order of Judge Holt having been served upon the commissioner, staying all proceedings herein until an order to show cause why Frank E. Little should not be punished for contempt has been disposed of, the hearing is hereby adjourned to Thursday, October 15, 1903, at 10:30 a. m.

108 Ex. 1, Oct. 15/03. G. R. C.

The President of the United States of America to William J. Youngs, Amy Wren or Wrenn, name "Amy" being fictitious, real given name unknown, Greeting:

We command you, that all and singular business and excuses being laid aside, you and each of you be and appear in your proper persons, before Hon. Samuel M. Hitchcock, a commissioner appointed by the district court of the United States of America, for the southern district of New York in the second circuit, at his office at the U. S. court and post office building in the city of New York, in the said southern district of New York, on the 15th day of October, one thousand nine hundred and three, at 10:30 o'clock in the forenoon of the same day, to testify all and singular what you and each of you may know in a certain proceeding now depending undetermined before said commissioner of the United States, for the southern district of New York wherein The United States of America is complainant and George W. Beavers is defendant, on the part of the defendant. And this you or either of you are not to omit, under the penalty upon each and every of you, of two hundred and fifty dollars.

Witness, Hon. Geo. B. Adams and Geo. C. Holt, judges of the district court of the United States, at the city of New York, the 7th day of October, in the year of our Lord one thousand nine hundred and three.

[SEAL.] THOS. ALEXANDER, *Clerk.*

(Endorsed:) The within subpœna was served on the within
109 named Wm. J. Youngs and Amy Wren on the 13th day of October, 1903, at their office, P. O. building, Brooklyn, N. Y. by showing to each of them this original and leaving with each of them a copy thereof. Charles J. Haubert, U. S. marshal, E. D. N. Y.—Dated Oct. 15th, 1903.—Original subpœna for 15th October 1903.

110 Ex. 2, Oct. 15/03 G. R. C.

The President of the United States of America to Hon. William J. Youngs, United States district attorney for eastern dist. of N. Y., Brooklyn, N. Y., Greeting:

We command you, that all business and excuses being laid aside, you appear and attend before Hon. Samuel M. Hitchcock, United States commissioner for the southern district of New York, at his office, room 78, in the United States court and post office building, in the borough of Manhattan, in the city of New York, on the fifteenth day of October, 1903, at 10:30 o'clock in the forenoon, to testify and give evidence in a certain proceeding now pending undetermined before said commissioner, between The United States of America, complainant, and George W. Beavers, defendant, on the part of the defendant and that you bring with you and produce at the time and place aforesaid, any and all documents, papers, requisitions and requests from local postmasters throughout the country for permission to test the machines known as Brandt automatic cashiers and manufactured by the Edward J. Brandt-Dent Company and filed in the Post Office Department between February 1st, 1897, and December 1st, 1900, together with any and all reports made by said local postmasters upon said machines and submitted to the said department between the dates above referred to and subsequent thereto. Also all correspondence, letters, telegrams and other evidences of communications between the said The Edward J. Brandt-Dent Company and the Post Office
111 Department of the United States of America which may be now under your control, also any and all the original contracts or documents relating thereto alleged to have been made by the Government of the U. S. or the Post Office Department thereof with the said The Edward J. Brandt-Dent Company for the purchase from said company of 250 or any other number of their so-called automatic cashiers, now in your custody, and all other deeds, evidences and writings which you have in your custody, or power concerning the premises. And for a failure to attend, you will be deemed guilty of contempt of court, and liable to pay all losses and damages sustained thereby to the party aggrieved and forfeit two hundred and fifty dollars in addition thereto.

Witness, the Honorable George B. Adams, and the Hon. Geo. C. Holt, judges of the district co-rt of the United States for the southern district of New York, the 7th day of October, in the year of our Lord one thousand nine hundred and three.

[SEAL.] THOS. ALEXANDER, *Clerk.*

MORGAN & SEABURY,
Def't's Attorneys.

(Endorsed:) United States district court.—United States of America *vs.* George W. Beavers.—Original—*Subpœna duces tecum* for Oct. 15.—The within *subpœna duces tecum* was served on the within named Wm. J. Youngs on the 13th day of Oct. 1903, at his office, P. O. building, Brooklyn, N. Y. by showing him the original and leaving with him a copy thereof. Charles J. Haubert, U. S. marshal, E. D. of N. Y.—Dated Oct. 15th, 1903.

112 Ex. 3, Oct. 15/03. G. R. C.

The President of the United States of America to Miss "Amy" Wren or Wrenn (real Christian name of witness unknown), c/o United States district att'y for eastern district of New York, Brooklyn, Greeting:

We command you, that all business and excuses being laid aside, you appear and attend before Hon. Samuel M. Hitchcock, United States commissioner for the southern district of New York, at his office, room 78, in the United States court and post office building in the city of New York, on the fifteenth day of October, 1903, at 10.30 o'clock in the forenoon, to testify and give evidence in a certain proceeding now pending undetermined before said commissioner, between The United States of America, complainant, and George W. Beavers, defendant, on the part of the defendant, and that you bring with you and produce at the time and place aforesaid, all minutes, exhibits, records, stenographic notes, documents and other papers and memoranda of any kind whatsoever made, received and taken at the inquiry of the grand jury of the United States of America held in the eastern district of New York, at borough of Brooklyn, New York, during the month of July, 1903, in the investigation leading to the indictment alleged to have been found against George W. Beavers at said sitting of the grand jury in relation to the alleged Brandt automatic cashiers, now in your custody, and all other deeds, evidences and writings which you have in your custody or power concerning the premises. And for a failure to attend, you will be deemed guilty of contempt of court, and
113 liable to pay all losses and damages sustained thereby to the party aggrieved, and forfeit two hundred and fifty dollars in addition thereto.

Witness, the Honorable George B. Adams, and the Hon. Geo. C. Holt, judges of the district court of the United States for the southern district of New York, the 7th day of October, in the year of our Lord one thousand nine hundred and three.

[SEAL.] THOS. ALEXANDER, *Clerk.*

MORGAN & SEABURY,
Def't's Attorneys.

(Endorsed:) United States district court.—United States of America *vs.* George W. Beavers. Original—*Subpœna duces tecum* for Oct. 15.—Morgan & Seabury, No. 290 Broadway, Manhattan, N. Y. city, att'ys for defendant.—The within subpœna was served on the within named Miss Amy Wren on the 13th day of Oct. 1903, at her office P. O. building, Brooklyn, N. Y. by showing her this original and leaving with her a copy thereof. Charles J. Haubert, U. S. marshal, E. D. of N. Y. Dated Oct. 15th, 1903.

114 UNITED STATES
vs.
GEORGE W. BEAVERS. } No. 1.

NEW YORK, *October* 15, 1903.

Present: The commissioner, Mr. Wise, Mr. Steuer.

Mr. STEUER: I offer in evidence the original subpœna issued by the clerk of the district court of the United States for the southern district of New York, under the seal of the court, directing the appearance of William J. Youngs and Amy Wren before the Hon. Samuel M. Hitchcock the commissioner appointed by the district court of the United States of America for the southern district of New York, in the second circuit, on the 15th day of October, 1903, at 10:30 o'clock in the forenoon, in this proceeding, being entitled "The United States of America, complainant, *vs.* George W. Beavers, defendant.

Marked Exhibit 1, G. R. C., of this date.

Mr. STEUER: I offer in evidence the proof of service made by Charles J. Haubert, U. S. marshal in the eastern district of New York, and endorsed upon the original supœna.

Part of Exhibit 1, G. R. C., of this date.

Mr. STEUER: I offer in evidence the original *subpœna duces tecum* issued by the clerk of the United States district court for the southern district of New York, under the seal of the court, on the
115 7th day of October, 1903, directed to William J. Youngs for his appearance before the Hon. Samuel M. Hitchcock, United States commissioner for the southern district of New York, on the 15th day of October, 1903, at 10:30 o'clock in the forenoon, to testify, give evidence in this proceeding, The United States of America, complainant, *vs.* George W. Beavers, defendant, and produce the documents and papers mentioned and set out in that subpœna; and also proof of service, endorsed upon the original subpœna by Charles J. Haubert, U. S. marshal for the eastern district of New York.

Marked Exhibit 2, G. R. C., of this date.

Mr. STEUER: I offer in evidence an original *subpœna duces tecum*, issued by the clerk of the United States district court for the southern district of New York, on the 7th day of October, 1903, under the seal of this court, directed to Miss Amy Wren, directing her appearance and the production of the documents mentioned in the

subpœna, on the 15th day of October, 1903, at 10:30 o'clock in the forenoon before the Hon. Samuel M. Hitchcock, U. S. commissioner for the southern district of New York; and the proof of service endorsed thereon by Charles J. Haubert, U. S. marshal for the eastern district of New York.

Marked Exhibit 3, G. R. C., of this date.

Mr. STEUER: The defendant calls Miss Amy Wren to testify in behalf of the defendant.

The COMMISSIONER: Is Miss Wren here?

Mr. WISE: No. Counsel objects, and asks on the record whether when those subpœnas were issued they were filled out as they appear, or whether they were in blank.

116 Mr. STEUER: Those subpœnas were served as they now appear; before service was made they were as they now appear; everybody presumes that the clerk of the United States district court for the southern district of New York performs his duty properly, and we stand ready to have the United States district court clerk of this district make proof to that effect, if counsel desires. Any information with respect to the appearance of these subpœnas he can get from the clerk of the court. They are issued under his original signature and under the seal of the court.

Mr. WISE: I deny on the record that these subpœnas, as they are now, were issued.

The COMMISSIONER: The subpœnas are received in evidence without objection.

Mr. STEUER: Now we call William J. Youngs.

The COMMISSIONER: Is William J. Youngs in court?

Mr. WISE: He is not.

Mr. STEUER: We ask that this record be certified to the United States district court in support of an application to punish each of these witnesses for contempt of court.

Mr. WISE: I object to this proceeding for the reason that I do not think the United States district court has anything to do with this proceeding whatever. This is an independent tribunal, and that it is either for the commissioner to punish or not to punish. I do not think the United States district court, or any other court, has anything to do with any contempt of this court.

The COMMISSIONER: I shall certify that record to the district court.

117 Mr. CHATFIELD: I have no standing, of course, to appear in any way, but at this stage of the proceeding I should like to express to you, as United States commissioner, a disavowal of any intention to disregard—because of any lack of respect—anything done by you, or done by the court, and to say on behalf of these witnesses who have been called, that they are not here, simply to raise the question of jurisdiction, and not at all because of any desire, directly or indirectly, to show disrespect. It was stated in open court by the attorneys for the defendant that they do not desire the punishment of the witnesses but, rather, their attendance,

and so it seems to me fitting that we should say that we are not staying away to prevent attending, but simply because we do not think the process is sufficient, and to raise the question whether they should attend: not to put themselves in a position of seeking to be punished for contempt. I have a personal letter from the district attorney to the U. S. commissioner (handing letter to the commissioner) stating what I have stated to you, simply as an earnest of his position, standing on the legal ground rather than on any personal ground that might be considered lack of respect. I don't want to say anything about this process; don't want to criticise the action of the defendants. I have no standing here in the court. We might some time have something to say about their action as well as what they say about ours.

The COMMISSIONER: The question of the subpœnas has been taken to the court on a subpœna issued by me as commissioner, and has been argued.

118 Mr. CHATFIELD: That is, new subpœnas either make that a useless question, or simply raise an academical question which, I suppose, will be straightened out between the counsel for the parties.

The COMMISSIONER: When I first became connected with the United States court it was the practice to have subpœnas issued out of the United States district court to the attorney before the United States commissioner. For some reason that practice was abandoned and it has now been the practice for a number of years for the commissioners to issue subpœnas themselves. If for no other reason than to have the practice established by the court, I should certify this question, irrespective of the question of contempt involved.

Mr. CHATFIELD: Then you mean the court's ruling does not involve a decision—that is, on your part, of whether you can punish for contempt. Simply that this is, in your judgment, a question for the court to decide.

The COMMISSIONER: It is.

Mr. WISE: I think that ought to be on the record.

Mr. STEUER: I think this is an absolutely wilful, deliberate, flagrant contempt, and it does not matter who has seen fit to advise this contempt. Either the United States commissioner is a nullity in this proceeding, or else the gentlemen in the eastern district have simply refused to recognize the United States district court in this district. If these subpœnas are legal, these men ought to be severely punished and the girl ought to be severely punished. If the subpœnas are illegal they have proved their discourtesy and we

119 will simply be proved to be unable to punish for contempt. They have had every opportunity to appear that a gentleman and a lady would desire. They have seen fit to refuse to appear and they will have to abide by that as the court determines, with respect to their advisers as well as themselves.

Mr. CHATFIELD: Of course, as far as courtesy is concerned, Miss Wren would come in a moment, if we were not advised to stand in the same position. The fees which have been paid her have been received under protest, and she would be very glad to attend. I don't want any misunderstanding.

The COMMISSIONER: I think it should be presented to the United States district court, the subpœna of that court. The witnesses have been served.

GEORGE F. DAGGETT, being duly sworn, testified as follows:

(By Mr. STEUER:)

Q. Are you in the employ of the United States Government?

A. Yes, sir.

Q. In what capacity?

A. The chief clerk to the inspector in charge of the New York division of post office inspectors.

Q. Are you acquainted with Mr. Frank E. Little?

A. Yes, sir.

Q. Is he one of the United States inspectors?

A. Yes, sir, he is a United States post office inspector.

Q. Where did you last see Frank E. Little?

A. Where did I last see him?

Q. Yes.

A. In our office.

Q. Where is your office?

A. Rooms 104, 106 and 109 on the fourth floor of this building.

120 Q. And when did you last see him, do you recall?

A. I don't now recall the date.

Q. Approximately?

A. Well, possibly three weeks ago.

Q. Have you any record of his present whereabouts?

A. I have not, no, sir.

Q. Nothing from which you could ascertain as to his present whereabouts?

A. Nothing.

Q. Is there any record kept in your office by any person, other than yourself, from which the whereabouts of the different post office inspectors can be ascertained?

A. The inspectors operating under the direction of our office are always kept track of by daily reports, and whenever they are answerable to our office in their work we always know where they are.

Q. Is Mr. Frank E. Little at the present time answerable to your office?

A. No, sir.

Q. When was he last answerable to your office?

A. Well, to my knowledge, not within six months.

Q. And during the last six months then you have no record from which his whereabouts could be traced?

A. No, sir.

Q. Now, would you make the same answers, Mr. Daggett, with respect to Inspector J. F. Oldfield?

A. Yes, sir, except that Mr. Oldfield has never been connected with our office and has never been answerable in daily reports, or otherwise, to our office.

Q. He was at your office more recently than Inspector Little was, was he not?

A. I think not.

Q. Or about the same time did you see them last?

A. They were there about the same time and I think that
121 neither inspector has been in our office since the time, possibly four weeks, ago, but I am not, perhaps, within a week of the exact time, because I have kept no record of it, and not even tried to remember the date.

Q. Do you know who has control of Mr. Little now; that is, to which department he is answerable now for his whereabouts?

A. Well, only as my information comes through the public information and channels that everybody has—that he is operating under the immediate direction of the department at Washington. Of course, under the proper official conducting investigations from the department.

Q. Do you know who those officials are or who the official is?

A. I have no connection whatever with those officials in the investigations that we allude to here, and only know that, as matter of information public, which everybody else knows, I am acquainted; not otherwise, there being absolutely nothing through our office connected with him.

Q. Well, which is the official that you know him to be answerable to?

A. I don't know that he is answerable—I don't know the particular official he is answerable to.

Q. And you make the same answers with respect to Inspector Oldfield?

A. Exactly, yes.

WILLIAM KLEIN recalled.

(By Mr. STEUER:)

Q. Mr. Klein, you recall the last appearance of Mr. Little in this proceeding, do you not?

A. Yes, sir.

Q. Since the time that Mr. Little was a witness and swore
122 in this proceeding and left the court room, have you made efforts to find him in this city?

A. I have.

Q. And have you been able to find him?
A. I have not.
Q. Have you gone to the inspector's room in this building to secure him?
A. I have gone there very frequently.
Q. Have you at each time had with you a copy of Judge Holt's order to show cause?
A. I did.
Q. Have you been able to serve that upon him at all?
A. I was unable.
Q. Have you been able to serve any subpœna on him?
A. No, sir.
Q. Now, you know Inspector Oldfield?
A. I do.
Q. You remember his appearance in court on the day that Mr. Little was sworn?
A. Yes, sir.
Q. At that time did you see Inspector Oldfield?
A. I did.
Q. Where did you see him?
A. In the inspector's office.
Q. At that time did you have a subpœna with you?
A. Yes, sir.
Q. Did you make any effort to serve Inspector Oldfield with that subpœna?
A. I did, that morning.
Q. Just please state what occurred.
A. Well, it was on the 22nd of September I came into the office and I saw two gentlemen standing—it was in room 104.
Q. In this building?
A. In this building. I saw two gentlemen standing at the window and I walked up to them. I believe it was Inspector Meyers, and the other, I ascertained, was Inspector Oldfield. I asked them if Mr. Little or Mr. Oldfield were in. They said no; and at the same time this gentleman, who was Mr. Oldfield, moved away from me, trying at the same time to hide his features. And then he
123 went into the inner room of the inspector's office—that is, between the main office and this inspector's room—and closed the door. When he closed the door I saw that this was Inspector Oldfield; I saw his features and recognized him. When he closed the door he put his face against the glass and I could distinctly see his features, because I could see it by the moustache—the peculiar colored moustache—which I could not see before because he was in the light and I had just come in from the dark hallway and therefore I could not recognize him at a glance. I then waited there and informed the people in the office that I knew this was Inspector Oldfield, they at the same time not admitting that it was him. So I stayed around there and one time I went back in the office—probably about a minute afterward—and saw that he just opened

the door and was looking out and just as I was going to walk toward him he closed the door.

Q. Could you get to him?

A. I don't know if the door was locked. I was told it was locked. I did not attempt to open it; I did not care to intrude upon the office of the inspectors.

Q. Since that time have you been able to serve him with a subpœna at all?

A. No, sir.

Q. After that time did you have a subpœna, issued in this proceeding?

A. Yes, sir.

Q. To Inspector Oldfield?

A. To Inspector Oldfield.

(By Mr. WISE:)

Q. Where is that subpœna?

A. You mean the subpœna that I was to serve upon Mr. Oldfield that morning? The one I had with me to serve?

124 Q. I don't know whether it is the one or not.

A. There is the original and I haven't the copy with me (producing).

Q. Mr. WISE: I ask that that be marked in evidence.

Marked Exhibit 4, G. R. C., of this date.

Q. How do you know that this man that you say was Oldfield, was Oldfield?

A. Because I recognized him.

Q. How did you recognize him?

A. I had previously served him and was introduced to him by Mr. Frank E. Little, the post office inspector.

Q. And because you were introduced to him you are willing to swear he was Oldfield?

A. I have heard him addressed as such.

Q. And on that you say you know that was Oldfield?

A. Yes, sir.

(By Mr. STEUER:)

Q. He had accepted that subpœna as Inspector Oldfield?

A. Yes, sir, on the previous day.

Q. Did he attend the examination pursuant to that?

A. Yes, sir; and after that time I had him pointed out to me as Inspector Oldfield.

Q. Hadn't any doubt it was the same person you saw?

A. None at all.

(By Mr. WISE:)

Q. You are equally positive you served a man called Whalen, Post Office Inspector Whalen, were you not?

A. No, I served Post Office Inspector Weyland, who was the man I wanted. It was merely a misdescription of the name. Knew the man I wanted.

Q. You will swear you served a man named W-h-a-l-e-n?

A. Yes; that morning on the 11th of December.

Q. And you gave him $2.00?

A. $2.00.

Q. You are equally positive that was Weyland?

125 A. No, sir; there is no such inspector to my knowledge.

Q. You served a subpœna on a man—addressed to a man named Whalen?

A. This gentleman I meant—it was meant for a man, Confucius Weyland.

(By Mr. STEUER:)

Q. You served the right man and his name was misspelled?

A. Misspelled.

Q. And then he returned the subpœna to Seabury & Morgan?

A. Signed C. S. Weyland.

Q. In other words, you had served the right man but the misspelling was in the subpœna and he took advantage of that and did not attend?

A. It seemed so.

Q. And returned the subpœna?

A. Yes.

Q. And subsequently you served a subpœna in which the name was properly spelled?

A. Yes.

Q. And he has appeared?

A. He has appeared.

EDMUND H. DRIGGS, being duly sworn, testified as follows:

Mr. WISE: Before he is examined I wish to instruct him as to his privilege. He is under an indictment for the same offense in the eastern district of New York.

Mr. STEUER: I think that is proper, Commissioner.

The COMMISSIONER: I instruct you then, Mr. Driggs, that you may refuse to answer any question which will tend to incriminate you.

(By Mr. STEUER:)

Q. Were you called or subpœnaed to attend at a session before the Federal grand jury in the eastern district of New York in the month of July, 1903?

A. Yes, sir.

Q. Were questions put to you before that body at that time?

126 Mr. WISE: I object to that. This is an attempt to disclose the proceedings before the grand jury and not in this jurisdiction. As I understand it, the only way that the minutes of the grand jury can be gotten at is to appear in that jurisdiction and move the court in a regular and orderly way for the right to examine those minutes; and the minutes are the best evidence of what took place before that grand jury, and this witness should not be permitted to show any such thing as is sought to be shown by his testimony here.

Mr. STEUER: The minutes are not the best evidence at all of what took place before the grand jury. The witnesses who appeared before the grand jury are the people best qualified to say what transpired. We hold that we have an absolute right in a proper proceeding to expose what took place before the grand jury. We don't do it at all in order to make a disclosure of what transpired before a secret body. We do propose to show what transpired before that grand jury so as to show that there was not any evidence upon which that body could have found an indictment, a legal, valid, lawful indictment against George W. Beavers. We have no other purpose in calling this witness or any other witness who appeared before the grand jury. For that we have the authority of this court in well considered cases.

Mr. WISE: In reply to that I have to say that it has been decided by the United States Supreme Court that in such a proceeding as this, where an indictment is produced, the presumption is that the indictment has been found in a regular and orderly manner,
127 and I can cite a case that of Green *v.* Henkel in 183 U. S. Reports.

Mr. Wise's objection sustained by the commissioner. Mr. Steuer takes an exception.

Mr. STEUER: So that there may be no mistake about it: What I proposed to show was that the testimony given by the witness was illegal, incompetent and irrelevant, and improperly received, and that it in no way gave a foundation for the finding by the grand jury of any fact attempted to be set out in that indictment, and I understand that you refuse to permit me to show by this witness.

Mr. Wise's objection sustained. Mr. Steuer excepts.

The WITNESS: I would like to ask if I am excused?

The COMMISSIONER: Yes.

The WITNESS: Is this for the rest of this hearing?

Mr. STEUER: We have no further subpœna to serve. Will it be necessary to go through the formality of swearing the witnesses?

Mr. WISE: I think it will.

Mr. STEUER: We want to note a demand by the defendant. The prosecution should examine Mr. Driggs.

Mr. WISE: Well, the prosecution declines. The prosecution has presented its case and rested. The commissioner has held that it is a *prima facie* case and we don't propose to present any further evidence.

128 GEORGE F. MILLER, being duly sworn, testified as follows:

(By Mr. STEUER:)

Q. Mr. Miller, were you subpœnaed to attend before the Federal grand jury in the eastern district of New York during the month of July, 1903?

A. I was not.

Q. Did you attend before that body?

A. No, sir.

The witness is informed by the commissioner that he is excused until he is under subpœna again.

HARRY F. BURNS, being duly sworn, testified as follows:

(By Mr. STEUER:)

Q. Where do you reside, Mr. Burns?

A. Brooklyn.

Q. What part of Brooklyn, what street number?

A. 620 McDonald.

Q. How are you now employed?

A. Secretary of the Nassau Trust Co.

Q. How were you employed during July, 1903?

A. Same position.

Q. Over what period of time does your employment with that trust company extend?

A. Between 14 and 15 years.

Q. Were you subpœnaed to attend before the Federal grand jury held in the eastern district of New York during the month of July, 1903?

A. I was subpœnaed to appear there; I can't say whether it was in July or not; I did not pay any attention to the date.

Q. Have you got the subpœna ticket was served on you?

A. I have not.

Q. Was it in connection with the case of United States *vs.* George W. Beavers?

A. It was.

129 Q. Were questions put to you before that body?

Mr. WISE: I make the same objection that I made when Mr. Driggs was examined; on all the grounds then stated.

Mr. STEUER: And we propose to show by this witness that he gave no testimony upon which, either separately or taken in conjunction with all the other testimony before that body, a legal, lawful, or valid indictment could be found against George W. Beavers; and we also propose to show that such testimony as was given by him before that body was illegal, incompetent, irrelevant and immaterial to the issue then before that body.

Mr. Wise's objection is sustained.

Mr. Steuer takes an exception.

Mr. STEUER: And, as I understand, that ruling would apply to any questions propounded on that point?

The COMMISSIONER: The same ruling would apply.

Do you desire me to certify this record as far as it refers to Mr. Youngs and Miss Wren?

Mr. STEUER: We will content ourselves with that.

The COMMISSIONER: Now, do you desire an adjournment until after such time as you make that application to the court? When will you make your application to the court?

Mr. STEUER: At once.

Mr. WISE: Before we stop, may I ask if the defense have any other witnesses they propose to call.

Mr. STEUER: We will not call any witnesses if the deter-
130 mination is against us on the application with respect to Miss Wren and Mr. Youngs. If the determination is in our favor we will call other witnesses.

Examination adjourned until Friday, October 23, 1903, at 10 o'clock a. m.

131 UNITED STATES
vs.
GEORGE W. BEAVERS. } No. 1.

NEW YORK, *October* 23, 1903.

Hearing adjourned to October 28th, 1903, at 10:30 a. m.

UNITED STATES
vs.
GEORGE W. BEAVERS. } No. 1.

NEW YORK, *October* 28, 1903.

Met pursuant to adjournment.

Present: The commissioner, Mr. Henry A. Wise, ass't U. S. attorney, for the Government. Messrs. Morgan & Seabury, for the defendant.

Mr. SEABURY: I request the commissioner to grant an adjournment of a few days in order to enable us to secure the attendance of two witnesses, Col. Young and Miss Wren, and I state that yesterday we submitted to the commissioner, for signature, two subpœnas, one running individually to Col. Young and Miss Wren, requiring their attendance before him this morning, and another subpœna requiring the attendance of the same witnesses, together with certain books and documents therein named.

132 Am I correct in the statement that you decline to sign those *subpœnas duces tecum?* It was reported to me that the

commissioner declined to sign the *subpœna duces tecum*, but he did sign the individual subpœna; and I now renew my request to the commissioner to sign the *subpœna duces tecum*, as well as a new individual subpœna, returnable at any day he may name.

The COMMISSIONER: I was requested yesterday by the defendant to issue *subpœnas duces tecum* directed to William J. Youngs, United States attorney for the eastern district of New York, and Amy Wren, stenographer in his office, requiring them to produce certain books, documents and records, and the minutes taken at the inquiry of the United States grand jury, by which the indictment against this defendant was found. I declined to issue these subpœnas, upon the ground that this application is equivalent, in my judgment, to an application to inspect the minutes taken before the grand jury, and, therefore, it is the rule in this district to deny that application

I shall mark the subpœnas presented to me, as Exhibits 1 and 2 of this date.

Mr. SEABURY: Defendant's counsel states that the important point, from the standpoint of the defendant, is to secure the attendance of the witnesses in question and the production of the documents named in the *subpœnas duces tecum*, and that he desires to have the record of this proceeding in such form that the defendant will be able to review on appeal his right to the process of this court for the attendance of the witnesses named, and the documents already mentioned.

133 The COMMISSIONER: I yesterday issued subpœnas for the attendance of William J. Youngs and Amy Wren, and the defendant may take such action as he is advised in regard to compelling the attendance of these witnesses.

In regard to the *subpœna duces tecum*, I have marked those subpœnas as Exhibits 1 and 2 of this date and they will constitute a part of the record of this proceeding which may be reviewed if the defendant desires.

Mr. SEABURY: I do not think, Commissioner, that will secure the defendant in his rights here at all. I think we are entitled in the first place to the process of this court to secure the attendance of the witnesses. Whether they will be permitted to testify is, of course, an entirely different question. Whether the documents they produce are competent to be offered in evidence is an entirely different question. The only question before you now is our application to have you issue process to secure the attendance of these witnesses, and the documents mentioned.

The COMMISSIONER: I have issued subpœnas to secure the attendance of these witnesses, but, as I have stated, the *subpœna duces tecum* calls for the production of the minutes, the proceedings before the grand jury, and this application is equivalent, in my judgment, to an application to inspect the minutes of the grand jury, and such applications are uniformly denied in this district.

Mr. SEABURY: I desire to call your honor's attention to the fact that the State Code of Criminal Procedure authorizes a crim-
134 inal magistrate to issue *subpœnas duces tecum* to witnesses, and I ask you to reconsider our motion to have you issue *subpœnas duces tecum*. And even if those documents are produced, the question cannot at all be analogous to a motion to inspect the minutes, because the question whether you will permit those documents to be inspected will be still before you when they are produced. I do not see how it is possible to pass on it beforehand.

The COMMISSIONER: I appreciate all you say, but whether the papers to which you ask my signature, appear on their face to call for the production of papers which would not be admissible—I think the question can be determined by me properly at the outset upon this application.

Mr. SEABURY: I also call your honor's attention to this fact, that all the documents are not of the character mentioned by you; that is to say, that some of the documents—the contract, for instance, which is alleged to have been procured by this defendant in an unlawful way—and it is most material that the defendant should be permitted to examine the very contract that he is alleged to have fraudulently procured. Certainly that is no part of the minutes of the grand jury and not entitled to any exemption from inspection.

The COMMISSIONER: I shall stand by my decision.

Mr. CHATFIELD: I think, Commissioner, it should go on the record that you are willing to renew the personal subpœna, because they did not have time to serve them this morning.

Mr. SEABURY: Well, the commissioner has signified his willingness to issue personal subpœnas. Of course, I am entirely
135 unprepared for this, Commissioner, and all I can do is to ask that you give me a day or two to determine what course should be adopted with reference to this. If it was in the State court the proper procedure would be to secure a mandamus and make the commissioner issue the subpœna. I think we should be afforded an opportunity to raise the matter in the proper way. I am not at all convinced; I am inclined to think we would not be properly secured in the present condition of the matter.

Mr. STEUER: Did I understand Mr. Chatfield to say the witnesses will be here?

Mr. CHATFIELD: I expect, unless circumstances change—something we do not know about now should turn up—we will have them here.

Mr. STEUER: When?

Mr. WISE: I object to that. Mr. Chatfield is not the attorney for the prosecution, or for the defendant, in this case, and he is not a witness.

Hearing in this case, No. 1, adjourned to Friday, October 30, 1903, at 10:30 a. m.

Hearing in the other cases adjourned to Friday, November 6, 1903, at 10:30 a. m.

136 UNITED STATES
vs.
GEORGE W. BEAVERS. } No. 1.

NEW YORK, *October 30th*, 1903.

Present: The commissioner. Mr. Henry L. Burnett, United States attorney, and Mr. Henry A. Wise, ass't U. S. attorney, for the Government.

Mr. Steuer and Mr. Seabury, for the defendant.

Mr. STEUER: Is it stipulated that the witnesses Col. Youngs and Miss Wren are here as if served with both subpœnas?

Mr. BURNETT: We shall oppose and fight any *subpœna duces tecum* to produce the archives of the office of the district attorney. What the understanding may be to the effect that they are here the same as though some such subpœna had been served upon them, I am not prepared to say. They are here: go ahead with your examination.

AMY WREN, being duly sworn, testified as follows:

Examination by Mr. STEUER:

Q. Where do you reside, Miss Wren?

A. In the borough of Brooklyn, 400 Classon Ave.

Q. What is your occupation Miss Wren?

A. I am clerk to the United States attorney for the eastern district of New York.

Q. You are not an assistant district attorney, are you?

A. I am designated as clerk; I don't know as I am an assistant or not.

Q. Have you ever been sworn in as an assistant distri t
137 attorney?

A. Well, I don't think that the oath reads—I know when I took office I made a copy of the oath of office that Mr. Pettit, who was then district attorney, took, and took that same oath and I do not think it says in the oath one way or the other what office you take. It simply is a general oath.

Q. Are you a member of the New York bar?

A. No, sir.

Q. Have you been admitted to practice in the United States courts?

A. No, sir.

Q. Not in any courts, do I understand?

A. No, sir.

Q. You have never received an appointment as an assistant United States attorney for the eastern district of New York, have you?

A. I was appointed as clerk.

Q. And that is the only capacity in which you know that you ever have been appointed in the employ of the United States Government?

A. Well, then I have taken a subsequent oath as stenographer to the grand jury.

Q. Now, in the month of July, 1903, were you in attendance at the Federal grand jury that was held in the eastern district of New York?

A. Yes, sir; as stenographer.

Mr. BURNETT: Wait a moment. Well, perhaps that is laying the foundation for the next question.

Q. And at that time was the matter of the United States vs. George W. Beavers——

Mr. BURNETT: Don't answer now.

Mr. STEUER: I do not think that that is proper procedure.

The COMMISSIONER: I will caution the witness not to make any disclosures of the inquiry by that body.

Mr. BURNETT: I object to it, if your honor please.

138 The COMMISSIONER: That objection is sustained.

Mr. STEUER: I suppose you want to hear me, Commissioner?

The COMMISSIONER: Not at all.

Mr. STEUER: We except.

Q. Did you make any notes of any proceedings that were had before the Federal grand jury during the month of July, 1903, held in the eastern district of New York?

Mr. BURNETT: I object, if your honor please. What took place before that grand jury is not a subject of inquiry here.

Mr. STEUER: I am asking whether she took notes. All that calls for is yes or no.

The COMMISSIONER: Objection sustained.

Mr. STEUER: I except.

Q. Can you state, of your own knowledge, who attended as witnesses before and upon the Federal grand jury that was in session during the month of July, 1903, in the eastern district of New York while the matter of The United States vs. George W. Beavers was under investigation?

Mr. BURNETT: I object, if your honor please.

The COMMISSIONER: Objection sustained.

Exception taken.

Q. Were you in the room of, and in the presence of the Federal grand jury which was in session during the month of July, 1903, in the eastern district of New York?

Objected to. Objection sustained. Exception.

Q. Were you admitted to the presence of, and were you in the room of the Federal grand jury which was in session in the
139 month of July, 1903, while the matter of United States *vs.* George W. Beavers was under investigation or inquiry?

Objected to. Objection sustained. Exception taken.

Q. Have you with you the notes or minutes or memorandum, or paper writing of any kind, that you either made at the time that the Federal grand jury was in session in July, 1903, in the eastern district of New York, with respect to the proceedings of inquiry that that body made in the matter of The United States *vs.* George W. Beavers, or in your possession?

Mr. BURNETT: I object, if your honor please. While this apparently is simply laying the foundation for another question and might be innocent in itself, I think the rule is never to lay the foundation to a competent question by asking an incompetent question. I therefore object at the outset.

Objection sustained. Exception taken.

Q. Will you be good enough to produce the minutes that you made of the proceedings of the Federal grand jury during the month of July, 1903, in the eastern district of New York, and particularly with respect to the proceedings in the matter of the inquiry of The United States *vs.* George W. Beavers?

Objected to. Objection sustained. Exception taken.

Q. Do you know of your own knowledge who were the witnesses that attended upon the Federal grand jury in the eastern district of New York, during the month of July, 1903, while the
140 matter of The United States *vs.* George W. Beavers was under investigation or inquiry?

Objected to. Objection sustained. Exception.

Q. Have you any personal knowledge as to the whereabouts, at the present time, of the requisitions and requests from local postmasters throughout the United States for permission to test the machines known as the Brandt automatic cashiers, and manufactured by the Edward J. Brandt-Dent Co.?

A. I have no knowledge, no, sir.

Q. Did you ever have any knowledge as to the whereabouts of those papers?

A. I don't think I ever did: don't think I ever saw them at all.

Q. Were they produced during the month of July, 1903, while you were in the presence of the Federal grand jury held during that month in the eastern district of New York?

Objected to. Objection sustained. Exception taken.

Q. Were those papers produced and exhibited to you, and were they marked by you, during the month of July, 1903, while you

were in the presence of and in attendance upon the Federal grand jury that was in session in the month of July, 1903, in the eastern district of New York?

Objected to. Objection sustained. Exception taken.

Q. Are you aware of the present whereabouts of any reports made by the local postmasters throughout the United States upon the Brandt automatic cashiers, manufactured by the Edward J. Brandt-Dent Co.?

A. Well, isn't that the same question?

Q. Are you aware of reports made by *the postmasters*?

A. I understand the question, do I know where those reports are?

141 Q. That is right?

A. No, I do not know.

Q. During the month of July, 1903, did you see such reports?

Mr. BURNETT: While I object to that because that might involve the fact that she saw some such reports in the grand jury room and it would be indirectly getting incompetent and improper testimony, you might ask when and where. The question should involve time and place, that is, should be specific. If it involves what took place in the grand jury room, then she cannot answer.

Mr. STEUER: As against that, I want to state that the purpose of the inquiry made by the defendant is not to disclose what transpired in the grand jury room. The purpose of the inquiry—so that it may not be misunderstood—is to show that there was nothing before the Federal grand jury, that found this indictment, upon which a legal, valid indictment could be based. When that is the purpose, and not simply to expose the secrets of the grand jury, it is competent and admissible; that is the point.

Mr. BURNETT: Now, it is equally objectionable to prove a negative of what did not take place before the grand jury as it is to prove the affirmative.

Objection sustained. Exception taken.

Mr. STEUER: Did you see during the month of July, 1903, those reports anywhere outside of the grand jury room?

Mr. BURNETT: If your honor please, on the further ground: I contend that there is no power on the part of the defendant

142 to go into the correspondence or investigations made by any executive officer acting under any authority of the President of the United States, or the executive department of the Government upon what information they acted, what papers are on file in those offices. Even the court cannot call that into question, except if in some way a paper may become legitimate testimony. Perhaps there may be some such paper, but the general investigation and correspondence upon which the Government acted in proceeding against criminals, or in carrying on a department, is outside of the

power of the judiciary to compel the executive department of the Government to disclose. I want to raise that question here now.

Objection sustained. Exception taken.

Q. Did you during the month of July, 1903, see those reports or any of them in the grand jury room of the Federal grand jury in session during that month in the eastern district of New York?

Objected to. Objection sustained. Exception taken.

The COMMISSIONER: You cannot go further with this line of examination, Mr. Steuer. I think you have shown or asked whether Miss Wren was present in the grand jury room, and now you ask a question which, of course, the other question precludes; the one question precludes the other.

Mr. STEUER: Miss Wren has testified that she was before the grand jury in the capacity of a stenographer.

Second question and answer on p. 148 of this record read by the stenographer.

Objected to. Objection sustained. Exception.

143 Q. Did you place marks of identification, in your own handwriting, upon any or all of the papers that were produced before the Federal grand jury in session in the eastern district of New York, during the month of July, 1903, while the matter of United States *vs.* George W. Beavers was under inquiry or investigation?

Objected to. Objection sustained. Exception taken.

Q. Did you during the month of July, 1903, or any time previous thereto, see any contracts purporting to be, or actually being, between the United States Government, or any department thereof, and the Edward J. Brandt-Dent Co.?

Objected to. Objection sustained. Exception taken.

Q. Did you in the grand jury room, during the month of July, 1903, in the presence of the grand jurors and while you were in attendance upon them, and while the matter of The United States *vs.* George W. Beavers was under inquiry or investigation, see any contract between the United States Government, or any department thereof, and the Edward J. Brandt-Dent Co.?

Objected to. Objection sustained. Exception taken.

Q. Did you, during the month of July, 1903, or at any time previous thereto, outside of the grand jury room, see any contract between the Edward J. Brandt-Dent Co. and The United States Government, or any authorized department thereof, by the terms of which the United States Government or any authorized department thereof, did purchase, or was to purchase, two hundred and fifty, or any other number, of the Brandt automatic cashiers, from the Edward J. Brandt Dent Co.?

Objected to. Objection sustained. Exception.

144 Q. Did you during the month of July, 1903, in the grand jury room, and in the presence of the grand jurors or in their absence, see the contract referred to in my last question?

Objected to. Objection sustained. Exception taken.

Q. Did you during the month of July, 1903, in the grand jury room of the Federal grand jury for the eastern district of New York, and in the presence of the grand jurors and while you were in attendance upon them, see the contract or a paper purporting to be such a contract as the one referred to in the two previous questions?

Objected to. Objection sustained. Exception taken.

Q. Did you during the month of July, 1903, see anywhere any letters, paper writing, memoranda, or correspondence of any kind between the Edward J. Brandt-Dent Co. and the United States Government, or any official thereof; or did you see any paper, memorandum or writing or correspondence purporting to be between the United States Government, or any official thereof, and the Edward J. Brandt-Dent Co., or any officer thereof?

Objected to. Objection sustained. Exception taken.

Q. Did you during the month of July, 1903, in the grand jury room of the Federal grand jury in session in the eastern district of New York during July, 1903, see any such letters, paper writings, memoranda, or correspondence, either actually being or purporting to be between the Edward J. Brandt-Dent Co., or any officer thereof, and the United States Government, or any official thereof?

Objected to. Objection sustained. Exception.

145 Q. Did you during the month of July, 1903, and in the presence of the grand jurors then in session in the eastern district of New York, in your own handwriting place any marks of any kind upon any such papers as were referred to in the two previous questions?

Objected to. Objection sustained. Exception taken.

Q. Do you know of your own knowledge the names of the persons who attended as witnesses upon and before the Federal grand jury in the eastern district of New York during the month of July, 1903, while the matter of The United States *vs.* George W. Beavers was under inquiry or investigation?

Objected to. Objection sustained. Exception taken.

Q. Now will you give us the names of the persons who did attend as witnesses before that Federal grand jury in session during the month of July, 1903, in the eastern district of New York while the

matter of The United States *vs.* George W. Beavers was under inquiry or investigation?

Objected to. Objection sustained. Exception taken.

Q. Do you know whether the Federal grand jury, as it was made up and constituted for the month of July, 1903, in the eastern district of New York, is still in session or not?

Objected to.

The COMMISSIONER: What are the grounds?

Mr. BURNETT: The ground is, it is a question of law perhaps whether it is still in session, and calls for a conclusion. Our grand jury is in session, as your honor knows—is supposed, in one view of the law, to be in session continuously, although we do not call them actually together except once a month or once in two months, and I do not think they have a right to — into the personnel of
146 that grand jury through the instrumentality of the district attorney. It is a question of law.

The COMMISSIONER: How is the question material, Mr. Steuer?

Mr. STEUER: The question is material in this, that while I do not think that the body is in actual session, I have a right to show that that which was before it did not warrant its action, and I contend that after its session is closed I have a right to show that that which was before it did not warrant its action. I want it to appear as a matter of record, so that it should not afterwards appear that I did not show that this body was still in session at the time I was propounding these questions. If these rulings are correct, let me suggest—and you are right that we have no right, under any conditions or circumsrances, to disclose what transpired before the Federal grand jury—what difference does it make whether it appears on the record that the personnel of that grand jury is no longer in session? On the other hand, if I am right in my contention, it would not be fair, that we should come back for the purpose of determining whether the grand jury is in session. No court will exclude this testimony if I have a right to use it, because of my inability to show that that grand jury is not in question.

The COMMISSIONER: You may answer that question, if you know.

Mr. BURNETT: The records of the court are the best evidence.

The COMMISSIONER: Well, I say if she knows.

Mr. STEUER: Whether it is or is not in session, that is all
147 the question is; the grand jury was in session in 1903.

The WITNESS: It is not, as far as I know.

WILLIAM J. YOUNGS, being duly sworn, testified as follows:

Examined by Mr. STEUER:

Q. Mr. Youngs, during the month of July, 1903, were you at any time in attendance upon the Federal grand jury in session in the eastern district of New York?

Objected to by Mr. Burnett. Objection sustained. Exception taken.

Q. You are acquainted, Mr. Youngs, with all of the assistant district attorneys for the eastern district of New York, are you not?

A. Yes, sir.

Q. And is Miss Amy Wren a United States assistant district attorney for the eastern district of New York?

A. Well, under the decisions of the United States Supreme Court I should say yes.

Q. Have you ever appointed her as your assistant United States attorney?

A. I do not have the appointment.

Q. Who has?

A. I believe the Department of Justice at Washington appoints; that is my recollection of it.

Q. Have you ever made any recommendation that Miss Amy Wren be appointed to be United States assistant district attorney?

Objected to. Objection sustained. Exception taken.

Q. Now, regardless of what the United States court decisions are—because I have not asked you for this, Mr. Youngs—I want
148 to know whether Miss Amy Wren was, in the month of July, 1903, United States assistant district attorney?

Mr. BURNETT: I object, if your honor please. She was on the stand and has stated the whole case.

The COMMISSIONER: I do not think there is any harm in answering the question.

A. Well, I don't know how to answer your question, Mr. Steuer, but if you will allow me I will tell you why.

The COMMISSIONER: You may state the reason, Mr. Youngs.

The WITNESS: Miss Wren was a hold-over, and she was appointed during Mr. Pettit's administration, and when I was in there it was not necessary for her to be appointed at all, but she is a hold-over from Mr. Pettit, and I really know nothing about it at all. I never looked at the oath of office or anything else.

Q. Did you assign her to duty during the month of July, 1903, as U. S. assistant district attorney?

Mr. BURNETT: I do not see the relevancy or competency of any of that testimony.

Objection sustained. Exception taken.

Q. Can you tell us, Mr. Youngs, the present whereabouts of the documents enumerated in this paper that I show you? (Handing witness a copy of a paper purporting to be a *subpœna duces tecum* directed to William J. Youngs, Esq., and signed by Samuel M. Hitchcock, U. S. commissioner for the southern district of New

York, and the paper is marked Exhibit 1 of this date for identification.)

Mr. BURNETT: I object; this is going into the writings, proceedings of the district attorney, his knowledge, or what knowl-
149 edge he had, his proceedings in executive office. I do not think it is competent.

Objection sustained. Exception taken.

Q. Are those papers or documents, or any of them, at the present time in your possession?

Objected to. Objection sustained. Exception taken.

Q. I ask you, Mr. Youngs, to produce those papers, or such of them as you have at the present time in your possession.

Mr. BURNETT: And by the district attorney now in charge of the matter on the part of the Government, he is instructed not to produce them, and I object to his producing them, and I ask the commissioner to so rule.

The COMMISSIONER: I so rule.

Mr. STEUER: I except.

Q. Mr. Youngs you are at present United States district attorney for the eastern district of New York?

A. I am.

Q. And you were in the month of July, 1903?

A. Yes, sir.

Q. Can you tell us, Mr. Youngs, the names of the witnesses who attended upon the Federal grand jury that was in session in the eastern district of New York during the month of July, 1903, and while the matter of The United States *vs.* George W. Beavers was under inquiry or investigation?

Objected to. Objection sustained. Exception taken.

FRANK E. LITTLE, recalled.

(By Mr. STEUER:)

150 Q. Mr. Little, have you any personal knowledge of what were the duties of George W. Beavers while he was the superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the United States?

Mr. WISE: I object on the ground that he has not claimed to have any personal knowledge. He made the complaint in this action on information and belief; based his information and belief on a certified copy of the indictment which was attached to the complaint.

The COMMISSIONER: Are the duties of that office prescribed by law.

The WITNESS: They are prescribed by law, and those that are not statutory are prescribed by the regulations of the Postmaster General.

The COMMISSIONER: You may answer.

A. Only in so far as the regulations prescribe the duties.

Q. Those regulations that you referred to and from which you derive your knowledge, are they reduced to writing?

A. They are in printed form.

Q. Have you a copy of them here?

A. I have not.

Q. Did you ever examine a copy of them?

A. I have.

Q. Then in so far as in your complaint, which you verified on the 3rd day of September, 1903, as you therein attempt to set out the duties with the performance of which George W. Beavers was charged, you derived your knowledge from those rules and regulations?

Mr. WISE: I object. The complaint is the best evidence; it states what it states, and the witness ought not to be called upon to explain it.

151 The COMMISSIONER: I think that is a proper question, Mr. Wise.

A. To a considerable extent, yes.

Q. Now, then, beyond that considerable extent, from what other sources did you derive your knowledge as to his duties?

A. From being on duty in the post office in Washington, and having occasion to visit the office quite frequently.

Q. Now tell us what you know of the duties with the performance of which George W. Beavers was charged, in so far as you derived your knowledge of those duties from your service in the post office and your visits to the department.

Mr. WISE: I object to that question as immaterial.

Mr. STEUER: He said he derived his knowledge from the rules and regulations. Had he stood by that and said "That is my knowledge," that would have ended our inquiry on that subject. But he says he got information from visiting the office. I am not willing that he should make a record that he had knowledge outside of the rules and regulations, and then not have it appear that he had not.

A. I can say I never saw him perform any duties except such as are prescribed by the regulations.

Q. Well, then, you do not know of any duties he was charged with, except such as are prescribed by the rules and regulations?

A. No.

Q. Do you now recall your own whereabouts on the 25th day of July, 1900, Mr. Little?

A. I could not recall where I was on that particular day unless I have reference to papers.

Q. Well, have you any papers here to which you might refer, that would refresh your recollection?

A. I have not.

152 Q. When did you first make the acquaintance of Mr. Beavers, Mr. Little?

A. In 1893, as I recollect.

Q. Do you happen to recall whether you saw him at all on the 25th of July, 1900?

A. 25th of July, 1900?

Q. Yes.

A. No, I could not recall.

Q. Can you state whether on the 25th of July, 1900, you were in the borough of Brooklyn?

A. 25th of July, 1900, I don't think I was.

Q. Well, couldn't you make that certain by stating positively whether you were or not?

A. The only way I can answer that is by saying that I am on the road continuously. I might have been in New York that day and I might have gone over to Brooklyn; but I can't say as to that. It is a matter in which it is impossible to say without reference to some data.

Q. Did you ever see Mr. Beavers write?

A. I have.

Q. And do you know his handwritings?

A. To a certain extent, yes.

Q. Did you ever see any agreement or contract of any kind signed by Mr. Beavers between him and the Edward J. Brandt-Dent Co.?

Mr. WISE: I object to that as immaterial and incompetent.

Objection sustained. Exception taken.

Q. Did you ever see Mr. Beavers in the company of any officer or any person connected with the Edward J. Brandt-Dent Co.?

Objected to. Objection sustained. Exception taken.

Q. Did you see him on the 25th of July, 1900, with any
153 officer or any representative of the Edward J. Brandt-Dent Co.?

Objected to. Objection sustained. Exception.

Q. Did you ever hear any conversation between Mr. Beavers and any officer or other person representing the Edward J. Brandt-Dent Co?

Objected to. Objection sustained. Exception taken.

Q. Did you derive all your knowledge with respect to the existence of any contract of agreement between George W. Beavers and the Edward J. Brandt Dent Co. from your examination and inspec-

tion of the certified copy of the indictment referred to in your complaint?

Objected to.

Mr. BURNETT: This is an officer of the Post Office Department acting directly under the authority and orders of the Attorney General, and it seems to me that it is not competent or proper to undertake to probe by this sort of process the knowledge and action of that executive department of the Government in investigating these cases or in bringing the criminals to justice. I do not think it is proper or competent to do that any more in the case of Mr. Little than of Mr. Youngs as a part of the executive department.

Objection sustained. Exception taken.

Q. Will you tell us please what information you have, or what knowledge you have, as to the existence of any contract made on the 25th of July, 1900, or at any other time, between George W. Beavers and the Edward J. Brandt-Dent Co.?

Objected to. Objection sustained. Exception taken.

154 Q. Will you tell us what knowledge or information you have, or ever did have, with respect to the making of any contract, or the existence of any contract or agreement, between the Edward J. Brandt-Dent Co. and George W. Beavers, by the terms of which George W. Beavers was to recommend to the First Assistant Postmaster General the order and purchase of 250 automatic cashiers for the use of the Post Office Department of the United States, and to procure a contract from the same for that company?

Same objection, ruling and exception.

Q. Did you ever have, or have you now, any knowledge on that subject other than that which you derived from examination and inspection of the indictment, or a certified copy thereof, referred to in your complaint?

Same objection, ruling and exception.

Q. Did you ever know of, or do you now know of, the existence of any contract between George W. Beavers and the Edward J. Brandt-Dent Co., of any kind?

Same objection, ruling and exception.

Q. Were you ever present at the making of any contract of any kind between George W. Beavers and the Edward J. Brandt-Dent Co.?

Same objection, ruling and exception.

Q. Do you know of any appropriations that were made by the United States Government for the purchase of automatic cashiers from the Edward J. Brandt-Dent Co.?

Same objection, ruling and exception.

Q. Do you know of any contract between George W. Beavers and the Edward J. Brandt-Dent Co., by the terms of which he was to receive any portion for his own private use, of the moneys
155 appropriated by the United States Government for the purchase of automatic cashiers from the Edward J. Brandt-Dent Co.?

Same objection, ruling and exception.

Q. Do you know of the fact as to whether George W. Beavers ever received any portion of any such moneys?

Same objection, ruling and exception.

Q. Did you ever know of the fact as to his having received any portion of any such moneys?

Same objection, ruling and exception.

Q. In making the allegation in your complaint, which was verified on the 3rd day of September, 1903, that George W. Beavers on the 25th of July, 1900, in the borough of Brooklyn, in the city and State of New York, and in the eastern district of New York, had made a fraudulent agreement with the Edward J. Brandt-Dent Co.—where did you derive your knowledge and information from?

Mr. WISE: I object. The complaint speaks for itself.

The COMMISSIONER: Does not the complaint set out where he derived his knowledge and information from?

Mr. STEUER: I am not bound by what he swore to. What difference does it make what he swore to, if I want to find out what the fact is?

The WITNESS (after examining the last par. on the second page of the complaint): I make the same answer to that I made in the written examination, in the official affidavit.

Q. That you derive your knowledge and information from an examination of the indictment? After examining the paper you verified, you say, "My answer is the same as I made in the complaint?
156 A. In that portion of the affidavit.

Q. Which refers to your sources of information?

A. Yes, sir.

Q. Will you please tell me now what sources of information you had with respect to that fraudulent contract which you swore existed between George W. Beavers and the Edward J. Brandt-Dent Co., and which was made on the 25th day of July, 1900?

A. The result of an investigation covering three months, or thereabouts, in which I interviewed all parties connected with the Edward J. Brandt-Dent Co., its agents and officers, and examined

the files of the Post Office Department pertaining to that particular subject.

Q. Did you ever talk to anybody connected with the Edward J. Brandt-Dent Co., in the presence of Mr. Beavers?

A. No.

Q. Were you ever present at any talk between Mr. Beavers and any person representing the Edward J. Brandt-Dent Co.?

A. No.

Q. Did you ever see any paper-writing between Mr. Beavers and the Edward J. Brandt-Dent Co., or any of its officers?

Objected to. Objection sustained. Exception taken.

Q. Were you ever present when Mr. Beavers procured any contract for the Edward J. Brandt-Dent Co. from the United States Government?

A. No.

Q. Were you ever present when he aided in procuring a contract for the Edward J. Brandt-Dent Co.?

A. No.

Q. Did you ever see anybody on behalf of the Edward J. Brandt-Dent Co. pay any money to Mr. Beavers?

A. No.

Q. Do you know of any concern, other than the Edward
157 J. Brandt-Dent Co., that manufactured automatic cashiers of the same kind and character as this, which they manufactured or supplied to the United States Post Office Department?

A. No.

Q. Did you ever buy any of those machines?

Mr. BURNETT: I object as totally immaterial.
Objection sustained. Exception taken.

Q. Did you ever see them purchase,—Mr. Little——?

Objected to. Objection sustained. Exception.

Q. —or sell machines?

Objected to. Objection sustained. Exception taken.
Mr. STEUER: You have allowed this question, Mr. Commissioner.
The COMMISSIONER: Well, I have reconsidered, Mr. Steuer.
Mr. STEUER: I except.

Q. Did you ever sell such machines, Mr. Little?

Objected to. Objection sustained. Exception taken.

Q. Did you ever see them sold?

Same objection, ruling and exception.

Q. Did you ever hear any conversation between George W. Beavers and the First Assistant Postmaster General?

A. I have.

Q. Did you ever hear any conversation between George W. Beavers and the First Assistant Postmaster General with respect to the purchase of 250 automatic cashiers?

A. I have not.

Q. Did you ever see Edmund H. Driggs and George W. Beavers together?

A. I have not.

Q. Did you ever see Edmund H. Driggs give any money to George W. Beavers?

A. No.

Q. Did you ever hear any conversation between Edmund H. Driggs and George W. Beavers?

A. No.

158 Q. You know George F. Miller, Mr. Little?

A. I do.

Q. Did you ever see George F. Miller and George W. Beavers together?

A. I could not say positively that I have or not.

Q. Did you ever hear any conversation between George W. Beavers and George F. Miller?

A. I have not.

Q. Did you ever see George F. Miller give George W. Beavers any money?

A. No.

Q. Did you ever see Edmund H. Driggs give George W. Beavers any check?

A. No.

Q. Did you ever see George F. Miller give George W. Beavers any check?

A. No.

Q. Do you happen to recall where you were on the 28th day of November, 1900?

A. I do not.

Q. Do you happen to recall whether you saw George W. Beavers on that day?

A. I could not say.

Q. Did you know anybody connected with the Edward J. Brandt-Dent Co. on the 25th of July, 1900?

A. Not beyond a knowledge by sight; not acquaintances.

Q. Had never been introduced to or spoken with any person in hat concern?

A. Never.

Q. Now, are those answers equally correct, or would you make the same answers with respect to the 28th of November, 1900?

A. Same thing.

Q. Did you hear any conversation at any time between George W. Beavers and anybody representing the J. Brandt-Dent Co., concerning a contract for the purchase of 250 of its automatic cashiers?

A. No.

Q. Did you ever see any paper-writing between George W.
159 Beavers and the Edward J. Brandt-Dent Co., with respect to the purchase of 250 automatic cashiers?

Objected to. Objection sustained. Exception taken.

Q. You have spoken in the course of your acquaintance, to Mr. Beavers, haven't you?

A. I don't understand the purport of your question.

Q. I say, in the course of your acquaintance I suppose you have spoken to George W. Beavers?

A. Usually spoke whenever we have met for the last ten years.

Q. Did you ever speak to him about the contract between himself and the Edward J. Brandt-Dent Co.?

A. Never.

Q. Did you speak about any transactions between himself and George F. Miller?

A. Never.

Q. Did you ever speak to him with respect to any transaction between himself and Edmund H. Driggs?

A. Never.

Q. Ever speak to him about his procuring, or aiding in procuring, any contracts for the Edward J. Brandt-Dent Co. from the United States Government?

A. No.

Q. Nor of his recommendations with respect to such contracts to the First Assistant Postmaster General?

A. No.

Q. You never spoke to him about having received any money from Miller from the Edward J. Brandt-Dent Co. through Miller, or from Driggs from the Edward J. Brandt-Dent Co. through Driggs, have you?

A. No.

Q. Did you ever hear any conversation between Edmund H. Driggs and any other representative of the Edward J. Brandt-Dent Co.?

A. Well, I have to explain that. No conversation pertaining to this particular matter. I have seen Mr. Miller and Mr. Driggs in conversation but not that I knew they were talking about anything pertaining to the things here.

160 Q. Did you hear the conversation?

A. I did.

Q. Did you ever hear any conversation between Mr. Edmund H. Driggs and any person representing the Edward J. Brandt-Dent Co. with respect to Mr. Driggs' position in that company, have you?

A. Never.

Q. And you never saw any paper writing which fixed the position of Edmund H. Driggs with the Edward J. Brandt-Dent Co., did you?

Objected to. Objection sustained. Exception taken.

Q. Where did you derive your information with respect to the capacity in which Edmund H. Driggs was serving the Edward J. Brandt-Dent Co., or did you ever have any information on that subject?

Mr. BURNETT: Now your question is double-barreled. Keep them separate.

Q. Did you ever have any information with respect to the capacity, if any, in which Edmund H. Driggs was serving the Edward J. Brandt-Dent Co.?

A. Yes.

Q. From whom did you derive your information?

Objected to.

A. My knowledge was obtained from Edmund H. Driggs himself.

Q. And was he the sole source of your information?

Objected to.

A. Not entirely from Mr. Driggs.

Q. Mr. Little, do you know the present whereabouts of Inspector Oldfield?

A. I do not.

Mr. STEUER: If I can secure the attendance of Inspector Oldfield—he is the only witness I want to examine—then I will be ready to close.

161 Mr. BURNETT: Another ground for delay. Have you a subpœna issued on him?

The COMMISSIONER: There was a subpœna issued yesterday.

Mr. BURNETT: If the commissioner thinks it proper and within his province, I should like to have the gentlemen state what they expect to prove by Mr. Oldfield, so as to show its materiality, and not take up all this time in delays.

Mr. STEUER: I think we have a right to have the record determine whether it is material or not.

Mr. Steuer suggested the following stipulation: First, that Mr. Oldfield was a witness before the grand jury: second, that he had no personal knowledge of the facts alleged in the complaint.

Mr. BURNETT: His first proposition is passed on here: He cannot go into the question whether Mr. Oldfield was before the grand jury or not, or what took place before the grand jury when Mr. Oldfield was there. His other proposition is that he had no personal knowledge of those transactions. I am willing to admit he had no personal knowledge. But whatever testimony he gave, what papers he produced, are not for the inquiry of this tribunal, is improper here, and it is simply doing a vain thing, this adjournment, and nothing legally is gained for the other side, and is only injustice to the Government, this tedious delay in bringing the matter to a close.

The COMMISSIONER: Mr. Steuer, is it your judgment that the United States attorney may not make such a stipulation before me as will bind the Government?

162 Mr. STEUER: Yes, sir, absolutely, with respect to what a witness will or will not know.

The COMMISSIONER: With respect to what the witness will testify, that the testimony before the commissioner will be so and so?

Mr. STEUER: Positively.

Mr. BURNETT: In the State courts same effect follows same cause, as if the witness appeared or not.

The COMMISSIONER: If Mr. O[illegible]d does not appear before the commissioner at the next hearing, I will ask the district attorney to make the stipulation.

Mr. Little agrees to have Mr. Oldfield in attendance on the adjourned day.

Hearing adjourned to Monday, November 3, 1903, at 2 o'clock p. m.

163 UNITED STATES vs. GEORGE W. BEAVERS. } No. 1.

NEW YORK, *November* 2, 1903.

Met pursuant to adjournment.

Present: The commissioner, Henry L. Burnett, Esq., and Mr. Henry A. Wise, for the Government. Mr. Seabury, for the defendant.

JOHN F. OLDFIELD, called on behalf of the defendant, being duly sworn, testified as follows:

Examination by Mr. SEABURY:

Q. Mr. Oldfield, where do you reside?

A. I reside in Ellicott City, Maryland.

Q. What is your business?

A. I am a post office inspector.

Q. How long have you been such?

A. Since 1897, I think; 1897 or '98.

Q. As inspector of the Post Office Department, were you assigned to work with Mr. Frank E. Little?

A. I was.

Q. When?

A. The 1st of May of this year, or the latter part of April.

Q. Did you make any investigations with reference to the matter of the United States against George W. Beavers?

A. I did.

Q. Did you know Mr. Beavers personally?

A. I do.

Q. When did you meet him?
A. I think I first met Mr. Beavers in 1897 in Washington.
Q. Whereabouts?
A. In the Post Office Department.
Q. Do you know where Mr. Beavers was engaged, or whether
164 he was in the service of the department or not?
A. He was superintendent of the salary and allowance division of the Post Office Department that time.
Q. Do you recollect where you were on the 25th of July, 1900?
A. I do not.
Q. Do you know whether you were in Brooklyn?
A. I do not.
Q. Are you familiar with the duties of Mr. Beavers while he was engaged as superintendent of the salary and allowance division?
A. Only so far as I know the rules and regulations.
Q. You don't know any further than the rules and regulations. You have read them?
A. I have read them over.
Q. You couldn't specify what his duties are?
A. Not at the present time.
Q. Do you know whether or not any appropriation had been made in July, 1900, for the purchase of any Brandt-Dent automatic cashiers?
A. I do not.
Q. Do you know whether any such cashiers were purchased for the Government during that year?
A. I do.
Q. Do you know by whom they were purchased?
A. Purchased by the Post Office Department through Mr. Beavers.
Q. When you say "through Mr. Beavers," what do you mean?
A. Well, I mean that the order came through the salary and allowance division.
Q. And what branch of the Post Office Department is that?
A. That is in the First Assistant Postmaster General's office.
Q. And how were these articles purchased: by contract?
A. Purchased by order; an order for 250 cashiers.
Q. In what form was that order?

165 Mr. BURNETT: I object to that. If it is in writing, it is the best evidence.

Q. Do you know whether it was in writing?
A. It was in writing.
Q. Did you ever see such order?
A. I have seen it.
Q. Where have you seen it?
A. We had it in our possession.
Q. When?
A. Well, during this investigation.

Q. Well, at what time?

A. Well, some time in May we received it, and I think it is still in the possession of the Government.

Q. From whom did you receive it, Mr. Oldfield?

A. I forget whether we received it from Mr. Brandt; I won't be positive of that; but we received it from the Brandt-Dent Co.

Q. What did you do with it?

A. Well, now, I could not say whether it is in Washington or not. It is among a lot of papers.

Q. Did you deliver that with other papers?

A. Yes.

Q. To whom did you deliver it?

A. I expect the chief inspector has it.

Q. Chief inspector of what?

A. Of the Post Office Department; Mr. Cochran.

Q. You say you delivered it to him as recently as what; May, 1903?

A. I cannot answer it correctly, but we had that order in our possession, for 250 cashiers. I haven't seen it since the grand jury was in session over in Brooklyn.

Q. Do you know whether it was present before the grand jury in Brooklyn?

Objected to. Objection sustained. Exception taken.

166 Q. Did you see it in Brooklyn?

A. I can't say that I did.

Q. Where is Mr. Cochran that you spoke of?

A. Mr. Cochran is chief inspector at Washington, and when I say Mr. Cochran has it—I agreed to deliver all the papers to our chief—I won't say that Mr. Cochran has that paper. But we have a great mass of correspondence.

Q. Did we understand you, Mr. Oldfield, that that order for the purchase of 250 Brandt automatic cashiers is one document?

A. Was one document, yes.

Q. And do you recall by whom it was signed?

Mr. BURNETT: I object. Going into the records of the executive office; incompetent, and it is secondary evidence; a written instrument, the contents are the best evidence.

Objection sustained. Exception.

Q. Did you ever read that contract or document, Mr. Oldfield?

A. I think I have.

Q. Do you recall its contents?

A. No, I do not.

Q. Do you recall its date?

A. I do not.

Q. Do you recall what, if any, signatures were upon it?

A. I do.

Q. You now recall what names those signatures were?
A. I do.
Q. Now I ask you to state what names there were?

Objected to. Objection sustained. Exception taken.

Q. Mr. Oldfield, you have seen the cashiers in question, that is to say, the Brandt-automatic cashiers, have you not?
A. I have.
167 Q. Do you know where those cashiers can be purchased in the open market?
A. I do not.
Q. Do you know of any other machines that answer the same purpose that can be purchased in the open market?

Objected to as immaterial. Objection sustained. Exception taken.

Q. Mr. Oldfield, do you know whether or not it was the duty of the supt. of salary and allowance division to make contracts for and on behalf of the department?

Mr. BURNETT: I object: it is a conclusion of law; it is not competent.
Objection sustained. Exception taken.

Q. Mr. Oldfield, do you recall where you were on the 28th day of November, 1900?
A. I do not.
Q. Do you know whether you were in the borough of Brooklyn on that day?
A. I do not.
Q. Do you know whether you saw Mr. Beavers on that day?
A. I do not.
Q. Did you see any officer of the Edward J. Brandt-Dent Co. on that day?
A. I did not.
Q. Did you see either Mr. Beavers or any officer of the Edward J. Brandt-Dent Co. on the 25th day of July, 1900?
A. I can't say; I don't remember.
Q. Did you on the 25th of July, 1900, see Mr. Edmund H. Driggs?
A. I do not remember as I did.
Q. Are not you sure that you did not?
A. What date was that?
Q. The 25th of July, 1900.
A. I don't think I saw Mr. Driggs on that day.
168 Q. Do you know Mr. Driggs now?
A. I do.
Q. When did you meet him?
A. I cannot answer that question; but since this investigation.

Q. Did you on the 25th of July, 1900, see Mr. George F. Miller?
A. I did not.
Q. Did you know him at that time?
A. I did not.
Q. Did you know him on the 28th of November, 1900?
A. I did not.
Q. On the 28th of November, 1900, did you know Mr. Driggs?
A. I did not.
Q. You did not see either of those two men on either of those dates, did you?
A. No, sir.
Q. And did you see any officer of the Edward J. Brandt-Dent Co. on either July 25th, 1900, or November 28, 1900?
A. I did not.
Q. Did you ever overhear any conversation between Mr. Beavers and anybody else?

Objected to as incompetent on the face of it; anybody else.

Q. I will make it more specific. Did you ever overhear a conversation between Mr. Beavers and any officer of the Edward J. Brandt-Dent Co.?
A. I did not.
Q. Ever overhear any conversation between him and Mr. Driggs?
A. I did not.
Q. Or Mr. Miller?
A. No.
Q. Do I understand you to say, Mr. Oldfield, that you knew that 250 automatic cashiers were purchased by the Government from the Edward J. Brandt-Dent Co. on the 25th of July, 1900?
A. I did.

Q. Do you know whether any more than 250 cashiers
169 were purchased?
A. Only from the records of the department.

Q. Did the records show a purchase of any more than 250 cashiers?

Objected to, that the records are the best evidence.
Objection sustained. Exception taken.

Q. Do you of your own knowledge know of any other purchase than the purchase of 250 cashiers on July 25, 1900?

Mr. BURNETT: Outside of the records; of your own knowledge?

A. I do not.
Q. How do you know of your own knowledge that 250 cashiers were purchased by the Government?
A. The way I know it is that Mr. Edward J. Brandt said he delivered them; the postmaster at Watertown said he delivered them. The records show they were sent by registered mail to that office.
Q. What records?

A. Of the Watertown post office.
Q. That is your source of knowledge as to the 250 machines?
A. Yes, sir.
Q. Have you any other knowledge on the subject?
A. George F. Miller told me they sold to the Post Office Department.
Q. When did he make that statement?
A. I can't recall the date, but in his office.
Q. Did he state that 250 cashiers were sold to the Government on July 25th, 1900?

Objected to. Objection overruled.

A. He stated that those 250 machines were delivered to the Post Office Department.
170 Q. As referring to those alleged, to those 250 machines alleged to have been sold?
A. Referring to that 250 machine order.
Q. On July 25th, 1900, did you know of your own knowledge whether or not Edmund H. Driggs was in the employ of the Edward J. Brandt-Dent Co.?
A. I did not.
Q. You have stated that you know nothing of any contract supposed to have been in existence between George W. Beavers and the Edward J. Brandt-Dent Co.?
A. I so stated.
Q. Do you know of your own knowledge that Mr. Beavers ever received any money for procuring, or aiding to procure, a contract from the Government for the purchase of 250 machines, or any other number of Brandt automatic cashiers?
A. I do not.
Q. Do you know of your own knowledge how this contract for the purchase of 250 automatic cashiers on July 25th, 1900 was placed with the Government?
A. I do no.
Q. You have stated, as I recall your testimony, Mr. Oldfield, that you did not see on July 25, 1900, Mr. Beavers and Mr. Driggs, or any officer of the Edward J. Brandt-Dent Co., together; is that correct?
A. I did not.
Q. Have you seen them together at any subsequent date?
A. I never have.
Q. You never saw Mr. Beavers with any officer of the Edward J. Brandt-Dent Co.?
A. I have not.
Q. I ask you the same question with reference to George F. Miller; ever see Mr. Beavers and George F. Miller together?
A. I have not.

Q. Well, as I understand you, Mr. Oldfield, your only
171 knowledge of the alleged transaction between Mr. Beavers and any officer of the Edward J. Brandt-Dent Co. is derived from the files of the department; is that right?

Mr. BURNETT: Objected to. It is assuming a fact he has not testified. It is in the records of the department in his investigations, and is from the records of the department.

A. Derived from the files of the department and from personal investigations of the officers of the Edward J. Brandt-Dent Co.
Q. What do you mean by investigations: what did they consist of?
A. Mr. Little and I investigated the case.
Q. How did they do it?

Objected to. Objections sustained. Exception taken.

Q. Did you derive any information with reference to the investigation from the files of the department?
A. In reference to the sale of the machines, we did.
Q. What information with reference to the sale of the machines did you ascertain from that source?

Objected to; that the records are the best evidence.
Objection sustained. Exception taken.

Q. Will you briefly describe what those records are that you refer to?
A. Well, it will be impossible to do that at the present time.
Q. Why?
A. Well, it has been some time since I looked over the papers and I cannot recall without going over the papers in the case.
Q. Don't you recall any of them, Mr. Oldfield?
A. No, I do not; not just now.
Q. You do not know what records you examined at all?
172 A. Well, we examined all the records bearing onthe case.
Q. What records did you examine; records in the Patent Office?
A. In the Post Office Department; not Patent Office.
Q. Then your investigations were confined to those records of the Post Office Department; is that correct?
A. Yes, sir.
Q. That is, the records of the First Assistant Postmaster General's office; or did it go beyond that?
A. No; it would be in the First Assistant's office; in the office in which Mr. Beavers was working.
Q. Did you derive any information outside of those records relating to this alleged contract between the Government and the Edward J. Brandt-Dent Co. for the purchase of 250 automatic cashiers on July 25, 1900?
A. I did.

Q. What were your other sources of information on the subject?

Objected to. Objection sustained. Exception taken.

Q. Did you ever derive any information relating to the purchase of these machines, from Mr. Beavers?
A. Never did.
Q. Did you ever derive any such information from Mr. Driggs?
A. I did.
Q. When?
A. It was during the investigation; I cannot recall the dates.
Q. Did you call on Mr. Driggs during that time?
A. I did.
Q. Have a conversation with him?
A. I did.
Q. Did you derive any information from Mr. George F. Miller?
A. I did.
173 Q. When did you derive that information?
A. During the investigation; I cannot recall the date.
Q. What information did yon derive?

Objected to. Objection sustained. Exception taken.

Q. What information, if any, did you derive as to the existence of an agreement alleged to be existing—to have existed—between Mr. Beavers and the Edward J. Brandt-Dent Co. by which the Edward J. Brandt-Dent Co. agreed to pay Mr. Beavers a certain sum of money for procuring, or aiding to procure, a contract from the Government?

Objected to. Objection sustained. Exception taken.

Q. Have you any such information whatever relating to that alleged contract?
A. Yes, I have.
Q. What information have you?

Objected to. Objection sustained. Exception taken.

Q. Do you know of your own knowledge that such was the fact,—that is to say, that there was an agreement between the Edward J. Brandt-Dent Co. and Mr. Beavers by which the company agreed to pay Mr. Beavers any sum of money for procuring, or aiding to procure, a contract from the Government?
A. Not of my own knowledge.
Q. What was the source of your information?

Objected to.

Mr. SEABURY: This is as to the other contract, Mr. Commissioner; not as to the contract between the Government——

The COMMISSIONER: The contract by which the Brandt-Dent Co. agreed to pay Mr. Beavers a certain sum of money.

Mr. SEABURY: Yes.

174 The COMMISSIONER: Objection sustained.
Exception taken.

Q. Were you in attendance upon and before the Federal grand jury for the eastern district of New York, in the month of July, 1903?

Objected to. Objection sustained. Exception taken.

Q. Did you appear before the Federal grand jury for July, 1903, in the eastern district of New York, in July, 1903?

Objected to. Objection sustained. Exception taken.

Mr. SEABURY: Mr. Commissioner, in regard to the *subpœnas duces tecum*, we desire to apply for two *subpœnas duces tecum*, which is only for the purpose of keeping my record straight. You will recall that I did apply the other day for a *subpœna duces tecum* directed to Col. Youngs, and also one directed to Miss Amy Wren, both of which subpœnas you declined at that time to sign. I believe they were marked as exhibits.

The COMMISSIONER: They were marked as exhibits and certified to Judge Holt. (First par. p. 163 of this record.)

Mr. SEABURY: I do not believe there was an exception noted. I want it noted.

I desire to again offer a *subpœna duces tecum* to the same witnesses, requiring the production of the same documents, and request your honor to sign those subpœnas and make them returnable at any day you may name.

The COMMISSIONER: I decline to sign the subpœnas on the ground that they call, on their face, for papers which were submitted to the grand jury; or for the notes taken before the grand jury, and
175 that it is not the practice of the United States courts in this district to allow an inspection of the minutes of the grand jury, and that, in my judgment, this is undertaking, in another way, to obtain an inspection of the minutes of the grand jury.

Mr. SEABURY: I except.

I also desire again to call your honor's attention to the fact that some of the documents called for do not constitute a part of the minutes of the grand jury—are entirely different documents—and I make the same request.

The COMMISSIONER: That request is denied.

Mr. SEABURY: I except.

The COMMISSIONER: The subpœnas produced to-day are marked for identification "A" and "B" of this date.

Mr. SEABURY: The defendant moves to dismiss upon the following grounds:

I. Upon the ground that the bench warrant issued by Judge Thomas was void and insufficient to confer jurisdiction upon the commissioner in that it fails to state facts sufficient to constitute a crime; and, further, because there is not endorsed thereon the written direction of a magistrate in the county wherein it, or the warrant based upon it, was executed, signed by him, with his name of office,

and dated at the city or county where it was made, the following, to-wit: "This warrant may be executed in the county of New York," in accordance with the provisions of section 156 of the New York Code of Criminal Procedure.

II. Upon the ground that the complaint on removal, verified by Frank E. Little, is insufficient to confer jurisdiction upon the
176 commissioner in that it is made solely upon information and belief, and fails to state any proper sources of information and grounds of belief.

III. Upon the ground that without a proper complaint on removal and a proper bench warrant, the commissioner has no jurisdiction to issue his warrant on which the accused was arrested and under which he is held, nor to entertain the proceedings; and that such a warrant is void because issued upon the said bench warrant of Judge Thomas, which latter warrant was not endorsed with, or annexed to, the oath of a credible witness in writing proving the handwriting of the magistrate by whom it was issued—in accordance with section 157 of the New York Code of Criminal Procedure.

IV. Upon the ground that the prosecution has failed to establish probable cause to believe the defendant guilty of the crime charged or of any crime against the United States.

V. Because there is no evidence before the commissioner tending to establish probable cause to believe the defendant guilty of the crime charged, or any crime against the United States.

VI. Upon the ground that the paper received in evidence as a certified copy of an indictment, alleged to have been found in the eastern district of New York, is entirely without any probative force, and is incompetent as evidence against the accused of the facts therein alleged, or of any facts whatever; (1) Because it is not exemplified, but purports to be only a certified copy of an indictment; (2) Because the name or names of the witnesses on whose
177 testimony it is presumed to have been found, are not endorsed thereon, nor are the names of any such witnesses endorsed thereon. (3) Because the indictment does not present a clear, consistent and unambiguous statement of facts, but, on the contrary, the statement of alleged facts therein contained is confused, inconsistent and ambiguous. (4) Because at best a certified copy of an indictment can be regarded as but secondary evidence of the facts therein alleged, and that this alleged indictment is not entitled to be accorded even this weight; for the further reason, that no foundation for the introduction of secondary evidence has been laid; and, further, because at least some of the witnesses who appeared before the grand jury which found the said indictment, and upon whose testimony it is assumed to have been found, were present before the commissioner, and the prosecution refused to call them to the stand and elicit testimony from them, or to submit them to the defense for the purpose of cross-examination, and because of the refusal of the commissioner, after due request so to do, to instruct

the said prosecution to call and place said witnesses upon the stand for said purpose.

VII. Upon the ground that the said indictment is insufficient in law on the face thereof, and is demurrable and bad for duplicity in that it completely, clearly and sufficiently charges the defendant with the commission of more than one crime in each of the six separate and distinct counts thereof.

VIII. Upon the ground that the bench warrant issued by Judge Thomas, and the warrant issued by the commissioner
178 herein, are and each was issued in violation of the fourth amendment of the Constitution of the United States, which provides that no warrant shall issue but upon probable cause, supported by oath or affirmation; and to issue a warrant for the removal of the accused, with the record before the commissioner in its present condition, would be a further violation of said provision of the Constitution and of the rights secured to the accused thereunder.

IX. Upon the further ground that the accused has been denied the rights accorded to him by the Constitution of the United States and the State of New York, and by the statutes of the United States, to be confronted with his accusers and the witnesses against him; and that he has been denied the right to be informed of the name or names of the witnesses who testified against the defendant, or who charged the defendant with the commission of the crime.

X. Upon the ground that the defendant has been denied his right to the process of the commissioner to compel the attendance of witnesses and the production of documents material to his defense, before the commissioner.

XI. Upon the further ground that the defendant has been denied the right to examine and cross-examine the witnesses produced before the commissioner, and because the defendant has been accorded a hearing in form only, and not in substance.

XII. Because of the errors in the admission and exclusion of evidence, committed at the hearing by the learned commis-
179 sioner.

XIII. Upon the ground that it affirmatively appears that there is lack of probable cause to believe the accused guilty of the crime charged, or any other crime.

The COMMISSIONER: Do I understand one of the grounds of your motion to be that the commissioner has declined to issue subpœnas to witnesses?

Mr. SEABURY: That is, including the *subpœnas duces tecum* to which we refer?

The COMMISSIONER: The commissioner has not declined to issue subpœnas to witnesses, but has only declined to issue the *subpœnas duces tecum*, that have been requested. Your motions are denied.

Mr. SEABURY: I except.

The COMMISSIONER: Is there any other motion, Mr. Seabury?

Mr. SEABURY: No, I have no other motion except to dismiss the proceeding; nothing that I can produce, other than the documents I have seeked to procure.

Mr. WISE: The Government now demands that the accused be committed to await such action as the district judge may decide upon, upon an application for a warrant for removal.

Mr. SEABURY: I ask that the application before Judge Holt for an order of removal be reserved until we can agree upon a date for argument.

Mr. WISE: Well, that the commissioner has nothing to do with.

The COMMISSIONER: I have no further jurisdiction in the matter than to discharge or commit the defendant.

180 I shall hold to commit the defendant to the custody of the United States marshal to await the order of the district judge.

181 Ex. 1, Oct. 30/03. G. R. C. Ident.

[L. S.] The President of the United States of America to William J. Youngs, Esq., Brooklyn, N. Y., Greeting:

We command you, that all business and excuses being laid aside, you appear and attend before Hon. Samuel M. Hitchcock, United States commissioner for the southern district of New York at his office room 78 United States court house and post office building in the borough of Manhattan, city of New York in said southern district of New York on the 28th day of October 1903 at 10:30 o'clock in the forenoon to testify and give evidence in a certain action now pending undetermined before said commissioner, for the southern district of New York, between The United States of America, complainant, and George W. Beavers, defendant, on the part of the defendant, and that you bring with you and produce at the time and place aforesaid, any and all documents, papers, requisitions and requests from local postmasters throughout the country for permission to test the machines known as Brandt automatic cashiers and manufactured by the Edward J. Brandt Dent Co. and filed in the Post Office Department between February 1st, 1897 and December 1st, 1900, together with any and all reports made by said postmasters upon said machines and submitted to the said department between the dates above referred to and subsequent thereto. Also all

182 correspondence letters, telegrams and other evidences of communication between the said The Edward J. Brandt-Dent Company and the Post Office Department of the United States of America which may be now under your control, also any and all the original contracts or documents relating thereto alleged to have been made by the Government of the U. S. or the Post Office Department thereof with the said The Edward J. Brandt-Dent Company for the purchase from said company of 250 or any other number of their so-called automatic cashiers, now in your custody, and

all other deeds evidences and writings, which you have in your custody or power concerning the premises. And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit two hundred and fifty dollars in addition thereto.

Witness Hon. Samuel M. Hitchcock United States commissioner, at the borough of Manhattan, in the city of New York, the 27th day of October, 1903.

SAMUEL M. HITCHCOCK, [SEAL.]
U. S. Commissioner for Southern Dist. of New York.

MORGAN & SEABURY,
Attorneys for Defendant.

183 A FOR IDENTIFICATION. S. M. Hitchcock, U. S. Commissioner.

The President of the United States of America to Miss
[L. S.] Amy Wren, c / o U. S. dist. att'y, Brooklyn, New York city, Greeting:

We command you, that all business and excuses being laid aside, you appear and attend before Hon. Samuel M. Hitchcock, United States commissioner for the southern district of New York at his office room 78, United States court house and post office building — the borough of Manhattan, city of New York, in said southern district of New York on the — day of ——, 190–, at — o'clock, in the —noon, to testify and give evidence in a certain action now pending undetermined before said commissioner for the southern district of New York, between The United States of America complainant and George W. Beavers, *defendant* on the part of the defendant and that you bring with you and produce at the time and place aforesaid, *a certain* all minutes, exhibits, records, stenographic notes, documents, and other papers and memoranda of any kind whatsoever made, received and taken at the inquiry of the grand jury of the United States of America held in the eastern district of New York, at borough of Brooklyn, New York, during the month of July, 1903, in the investigation leading to the indictment alleged to have been found against George W. Beavers at said sitting of the grand jury in relation to the alleged Brandt automatic cashiers now in your custody, and all other deeds, evidences and writings, which you have in your custody or power concerning the premises. And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit two hundred and fifty dollars in addition thereto.

Witness, Samuel M. Hitchcock, United States commissioner, at the borough of Manhattan, in the city of New York, the — day of ——, 190–. —— ——, *Clerk.*

MORGAN & SEABURY,
Attorneys for Defendant.

184 B FOR IDENTIFICATION. S. M. Hitchcock, U. S. *Counsel.*

[L. S.] The President of the United States of America to Hon. Wm. J. Youngs, U. S. dist. att'y, Brooklyn, N. Y., Greeting:

We command you, that all business and excuses being laid aside, you appear and attend before Hon. Samuel M. Hitchcock, United States commissioner for the southern district of New York at his office room 78 United States court house and post office building in the borough of Manhattan, city of New York, in said southern district of New York, on the — day of —— 190–, at — o'clock in the —noon, to testify and give evidence in a certain action now pending undetermined before said commissioner, for the southern district of New York, between The United States of America, complainant, and George W. Beavers, defendant on the part of the defendant and that you bring with you and produce at the time and place aforesaid, *a certain* any and all documents, papers, requisitions and requests from local postmasters throughout the country for permission to test the machines known as Brandt automatic cashiers and manufactured by the Edward J. Brandt Dent Co., and filed in the Post Office Department between February 1st, 1897 and December 1st, 1900, together with any and all reports made by said postmasters upon said machines and submitted to the said department between the dates above referred to and subsequent thereto.

185 Also all correspondence, letters, telegrams and other evidences of communication between the said The Edward J. Brandt Dent Company and the Post Office Department of the United States of America which may be now under your control, also any and all the original contracts or documents relating thereto alleged to have been made by the Government of the U. S. or the Post Office Department thereof with the said The Edward J. Brandt Dent Company for the purchase from said company of 250 or any other number of their so-called automatic cashiers, now in your custody, and all other deeds, evidences and writings which you have in your custody or power concerning the premises. And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved and forfeit two hundred and fifty dollars in addition thereto.

Witness Samuel M. Hitchcock United States commissioner, at the borough of Manhattan, in the city of New York, the — day of —— 1903. —— ——, *Clerk.*

MORGAN & SEABURY,
Attorneys for Defendant.

186 UNITED STATES OF AMERICA, *Southern District of New York.*

UNITED STATES *vs.* GEORGE W. BEAVERS. } Before Samuel M. Hitchcock, United States Commissioner.

I, Samuel M. Hitchcock, United States commissioner, for the southern district of New York, do hereby certify, that the foregoing writings comprise the entire record of proceedings had before me in the above entitled matter.

In witness whereof I have hereunto set my hand and affixed my seal at the borough of Manhattan, city of New York, southern district of New York, this 9th day of November, 1903.

[SEAL.] SAM'L M. HITCHCOCK,
U. S. Commissioner, Southern District of New York.

(Endorsed:) U. S. district court, Filed Nov. 9, 1903, — m. S. D. of N. Y.

187 UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, Thomas Alexander, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate, to wit: the testimony and exhibits taken before Com'r Hitchcock, in the proceeding entitled United States *vs.* George W. Beavers, have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, this 23rd day of December in the year of our Lord one thousand nine hundred and three, and of the Independence of the said United States the one hundred and twenty-eighth.

[SEAL.] THOS. ALEXANDER, *Clerk.*

188 At a stated term of the circuit court of the United States in and for the southern district of New York, held at the United States court house, and post office building, in the borough of Manhattan, of the city of New York, on the 11th day of November, 1903.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Petition of GEORGE W. BEAVERS for the Writs of *Habeas Corpus* and Certiorari.

Order Denying Writ of Habeas Corpus and Certiorari.

On reading and filing the petition of George W. Beavers, verified on the 10th day of November, 1903, for a writ of *habeas corpus*, directed to William Henkel, Esq., United States marshal in and for the southern district of New York, requiring him to bring and have the petitioner before this court, together with the true cause of his detention and restraint of the petitioner, to the end that this court may act thereupon, as of right and according to law ought to be done; and for a writ of certiorari directed to Hon. Samuel M. Hitchcock, United States commissioner for the southern district of New York, and to Thomas Alexander clerk of the U. S. district court for the southern district of New York, in aid thereof, commanding that he return all proceedings against your petitioner to this court forthwith for such action as may be proper in the premises; and upon the said writs, and it appearing that the restraint of the said petitioner is not unlawful,

189 Now, after hearing Max D. Steuer, Esq., of counsel for the said petitioner in support of said writ and Henry L. Burnett, Esq., of counsel in opposition thereto, and due deliberation having been had, it is

Ordered that the said application be and the same is in all things denied.

E. HENRY LACOMBE, *U. S. C. J.*

(Endorsed:) U. S. circuit court, southern district of N. Y.—United States of America *vs.* George W. Beavers.—Order denying writ of *habeas corpus* and certiorari.—Morgan & Seabury, attorneys for defendant, No. 290 Broadway, New York, N. Y.—U. S. circuit court, southern district of New York, Filed Nov. 11, 1903, John A. Shields, clerk.

190 United States Supreme Court.

UNITED STATES
vs.
GEORGE W. BEAVERS. } Bond on Appeal.

UNITED STATES OF AMERICA,
Southern District of New York.

Be it remembered that on the 11th day of November, 1903, before me, George C. Holt, one of the judges of the district court of the United States, southern district of New York, personally came,

George W. Beavers, as principal and James R. Brown as surety and severally acknowledged themselves to owe to the United States of America, that is to say: the said George W. Beavers, the sum of five thousand dollars, and the said James R. Brown, the sum of five thousand dollars, separately to be levied and made on their respective goods, chattels, lands and tenements to the said United States, if default shall be made in the condition following, to wit:

Whereas the said George W. Beavers was detained in the custody of William Henkel, as United States marshal for the southern district of New York under commitment and warrant of removal to the eastern district of New York, granted by Hon. George C. Holt, judge of the United States district court for the southern district of New York on the 10th day of November, 1903;

191 Whereas the said George W. Beavers made an application to the United States circuit court, before Hon. E. Henry Lacombe, circuit judge on the 10th day of November, 1903, for a writ of *habeas corpus*, directed to said William Henkel United States marshal in and for the southern district of New York, requiring said marshal to bring and have George W. Beavers, before said court, together with the true cause of his detention, and;

Whereas, the said George W. Beavers made an application to the United States circuit court before Hon. E. Henry Lacombe, on the 10th day of November, 1903, for a writ of certiorari, directed to Hon. Samuel M. Hitchcock, United States commissioner, and to Thomas Alexander, clerk of the United States district court for the southern district of New York in aid thereof, commanding that they return all proceedings against your petitioner to the circuit court forthwith, for such action as might be proper in the premises, and

Whereas on the 11th day of November, 1903, the said Hon. E. Henry Lacombe, United States circuit court judge did make his final order denying said application for a writ of *habeas corpus* and,

Whereas, the said George W. Beavers has appealed from said final order to the Supreme Court of the United States, and

Whereas, the said Hon. E. Henry Lacombe, United States circuit judge did thereupon allow such appeal and ordered that pending such appeal, the custody of said George W. Beavers should not be disturbed and I having ordered that the said George W. Beavers be

192 enlarged upon bail in the sum of five thousand dollars, for his appearance to answer the exigency and determination of said appeal and to personally abide the final decision and determination of the said Supreme Court of the United States in that behalf.

Now, therefore, the condition of this obligation is such that if the said George W. Beavers shall duly, personally appear in the United States circuit court for the southern district of New York to answer the exigency and determination of said appeal and personally abide the final decision and determination of the said Supreme Court of the United States, and of said circuit court of the United States,

upon the mandate of the said Supreme Court of the United States and obey and abide the orders of said circuit court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then this recognizance to be void, otherwise to remain in full force and virtue.

GEORGE W. BEAVERS. [SEAL.]
JAMES R. BROWN. [SEAL.]

Taken and acknowledged before me the day and year first above written.

GEO. C. HOLT, *J.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James R. Brown, of Audubon Park in the city of New York, being duly sworn, says that he is worth the sum of ten thousand dollars, over and above all his just debts and liabilities.

JAMES R. BROWN.

193 Sworn to before me this 11th day of November, 1903.

GEO. C. HOLT, *J.*

Recognizance approved as to form and sufficiency.

GEO. C. HOLT,
United States District Judge.

(Endorsed:) United States circuit court.—George W. Beavers, appellant, *vs.* William Henkel, *et al.*—Bond pending appeal.—Morgan & Seabury, attorneys for appellant, No. 290 Broadway, New York, N. Y.—U. S. circuit court, southern district of New York, Filed Nov. 11, 1903, John A. Shields, clerk.

194 *Notice of Appeal.*

Circuit Court of the United States for the Southern District of New York.

In the Matter of the Petition of GEORGE W. BEAVERS for the Writs of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant,
against
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York; Thomas Alexander, Clerk of the District Court of the United States, Southern District of New York; Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Appellees.

SIRS: Please take notice that George W. Beavers, the petitioner above named hereby appeals to the Supreme Court of the United

States *for* the final order made and entered on the 11th day of November, 1903, denying his application for writs of *habeas corpus* and certiorari; and from each and every part of said order.

Dated at the city of New York, on the 11th day of November, 1903.

Yours, &c., MORGAN & SEABURY,
Attorneys and Counselors for Petitioner,
290 *Broadway, Manhattan, New York City.*

195 To Hon. Henry L. Burnett, United States district attorney in and for the southern district of New York.

To William Henkel, Esq., United States marshal in and for the southern district of New York;

To Thomas Alexander, Esq., clerk of the district court of the United States, in and for the southern district of New York;

To Samuel M. Hitchcock, Esq., United States commissioner in and for the southern district of New York.

(Endorsed:) U. S. circuit court, southern district of N. Y.—Geo. W. Beavers, appellant, *vs.* William Henkel, etc. *et al.*—Notice of appeal.—Morgan & Seabury, attorneys for defendant, No. 290 Broadway, New York, N. Y.—A copy of the within paper has been this day received at this office. Nov. 11, 1903, Henry L. Burnett, U. S. attorney.—I hereby admit service of the within notice of appeal. Nov. 12, 1903. Wm. Henkel, U. S. marshal, S. D. N. Y.—U. S. circuit court, southern district of New York, Filed Nov. 12, 1903, John A. Shields, clerk.

196 *Petition of Appeal.*

Circuit Court of the United States, Southern District of New York.

In the Matter of the Petition of GEORGE W. BEAVERS for a Writ of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant,
against
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York; Samuel M. Hitchcock, U. S. Commissioner for Southern District of New York; Thomas Alexander, Clerk of U. S. District Court for Southern District of New York, Appellees.

The petition of the above named petitioner, George W. Beavers, for an order allowing an appeal to the Supreme Court of the United States from the final order hereinbefore entered in this case.

George W. Beavers, the petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and en-

tered by this court in this case on the 11th day of November, 1903, whereby it was ordered that his application for a writ of *habeas corpus* directed to William Henkel, United States marshal in and for the southern district of New York, requiring the said marshal to bring and have your petitioner before this court and that his application for a writ of certiorari directed to Hon. Samuel M. Hitchcock, United States commissioner for the southern district of New York
197 and to Thomas Alexander, clerk of the district court for the southern district of New York, commanding them to return all proceedings against your petitioner to the circuit court of the United States forthwith for such action as might be proper in the premises be and the same are hereby denied;

Now comes by Morgan & Seabury, his solicitors and counsel, and petitions this court for an order allowing your said petitioner to prosecute an appeal from said final order to the Supreme Court of the United States under and according to the laws of the United States in that behalf made.

Your petitioner is advised by counsel that there are grave doubts as to whether the proceedings referred to in the petition (a partial copy of the minutes of which is attached to the petition for the writs and marked Exhibit 6), have not infringed the constitutional rights of your petitioner and that the commitment of your said petitioner and the restraint of his person referred to in said petition is without authority of law and that the said United States commissioner before whom your said petitioner was arraigned as set forth in the said petition above referred to had no jurisdiction either to require bail of your said petitioner or to commit your said petitioner in default thereof, and that your petitioner desires in good faith to submit the constitutional questions and other questions involved, to the Supreme Court for their determination.

Your petitioner will ever pray.

MORGAN & SEABURY,
Attorneys for Petitioner, 290 *Broadway*,
Manhattan, New York City.

198 UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

George W. Beavers, being duly sworn says that he is the petitioner above named; that the foregoing petition is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

GEORGE W. BEAVERS.

Sworn to before me this 11th day of Nov. 1903.

S. D. EDICK,
[SEAL.] *Notary Public, Rockland Co.*

Certificate filed in New York Co.

The foregoing petition on appeal is granted and it is ordered that the custody of the prisoner pending appeal shall not be disturbed. Supersedeas bond fixed at $250.

Done in open court this 11th day of Nov. 1903.

E. H. LACOMBE,
Circuit Court Judge.

(Endorsed:) U. S. circuit court, southern district of N. Y.—George W. Beavers, *vs.* William Henkel, U. S. marshal, &c. *et al.*—Petition of appeal.—Morgan & Seabury, attorneys for appellant, No. 290 Broadway, New York, N. Y.—A copy of the within paper has been this day received at this office. Nov. 11, 1903, Henry L. Burnett U. S. attorney.—U. S. circuit court, southern district of New York, Filed Nov. 11, 1903, John A. Shields, clerk.

199 *Assignment of Errors.*

In the Supreme Court of the United States.

In the Matter of the Petition of GEORGE W. BEAVERS for Writs of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant,
against
WILLIAM HENKEL, U. S. Marshal in and for Southern Dist. of New York; Thomas Alexander, Clerk of District Court of U. S. in and for Southern Dist. of New York, and Samuel M. Hitchcock, U. S. Commissioner in and for Southern District of New York, Appellees.

Assignment of errors.

The petition of George W. Beavers, by Morgan & Seabury his counsel, in connection with his petition of appeal to the supreme court in and for the southern district of New York, entered herein on the 11th day of November, 1903, denying the writs of *habeas corpus* and certiorari and makes and files the following assignment of errors:

The court erred:

1st. In denying the petitioner's writs of *habeas corpus* and certiorari and remanding him to the custody of the marshal.

2nd. In refusing to grant said writs.

3rd. In refusing to discharge said petitioner.

4th. In holding that the restraint of the petitioner's liberty is legal.

200 5th. In holding that the restraint of your petitioner is not a violation of his substantial rights.

6th. In holding that said alleged indictment stated an offence against the laws of the United States.

7th. In holding that said alleged indictment was properly admitted in evidence before the honorable commissioner, in proof of probable cause.

8th. In holding that there was sufficient evidence of probable cause.

9th. In holding that the warrant of removal made by the United States district judge for the southern district of New York, was issued upon the finding of probable cause.

10th. In holding that there was no reversible error in the commissioner's admission and exclusion of testimony on the hearing.

11th. In holding that your petitioner was not then and there entitled to be discharged from the custody of the marshal.

12. In holding that the said commissioner at the time of the arraignment of your said petitioner before him, or at any other time, had any jurisdiction, right or authority to require bail of your petitioner or to commit your said petitioner in default of such bail.

13th. In holding that the commissioner properly refused to compel the production of documents required by the defense.

14th. In holding that your petitioner was in custody of the said William Henkel, United States marshal in and for the south-
201 ern district of New York and deprived of his liberty by him by due process of law.

15th. For other errors appearing on the record, by reason whereof the petitioner prays that the said order dismissing the said writ of *habeas corpus* be refused and that your petitioner be discharged from custody.

GEORGE W. BEAVERS,
By MORGAN & SEABURY,
His Att'ys & Counsellors.

MORGAN & SEABURY,
Counsel for Petitioner, 290 *Broadway*,
Borough of Manhattan, New York City.

(Endorsed:) U. S. circuit court, southern district of N. Y.—George W. Beavers *vs.* William Henkel, U. S. marshal, etc. *et al.*—Assignment of errors.—Morgan & Seabury, attorneys for app'l't No. 290 Broadway, New York, N. Y.—A copy of the within paper has been this day received at this office. Nov. 11, 1903, Henry L. Burnett, U. S. attorney.—U. S. circuit court, southern district of New York, Filed Nov. 11, 1903, John A. Shields, clerk.

202 Supreme Court of the United States.

In the Matter of the Petition of GEORGE W. BEAVERS for Writs of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant,
vs.
WILLIAM HENKEL, U. S. Marshal in and for the Southern District of New York, Appellee.

Know all men by these presents, that we, George W. Beavers as principal, and Max D. Steuer and James R. Brown, as sureties, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars ($250) to be paid to the United States to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 11th day of November, 1903.

Whereas lately, to wit, on this 11th day of November, 1903, at a circuit court of the United States in and for the southern district of New York, in a proceeding therein pending an order was entered denying the application of the above named petitioner for a writ of *habeas corpus* and certiorari,

203 And the said petitioners having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the clerk's office of the said circuit court to review the same;

Now, the condition of the above obligation is such that if the said petitioner George W. Beavers shall prosecute said appeal to effect and shall answer all costs if *they* shall fail to make the said appeal good, then this obligation to be void, else to remain in full force and effect.

GEORGE W. BEAVERS. [SEAL.]
MAX D. STEUER. [SEAL.]
JAMES R. BROWN. [SEAL.]

Sealed and delivered and taken and acknowledged this 11th day of November, 1903, before me.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Max D. Steuer and James R. Brown, each being duly sworn, for himself says, that he is worth more than the sum of five hundred dollars over and above all his just debts and liabilities.

MAX D. STEUER.
JAMES R. BROWN.

Sworn to before me this 11th day of November, 1903.

JOHN A. SHIELDS,
[SEAL.] *U. S. Commissioner, S. D. of N. Y.*

204 Approved as to form, amount and sufficiency.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court, southern district of New York. Filed Nov. 11, 1903, John A. Shields, clerk.

205 *Citation on Appeal.*

THE UNITED STATES OF AMERICA, ss:

The President of the United States to Hon. Henry L. Burnett, United States district attorney for the southern district of New York; John A. Shields, Esq., clerk of the United States circuit court for the southern district of New York; William Henkel, Esq., United States marshal in and for the southern district of New York; Samuel M. Hitchcock, Esq., United States commissioner for the so. dist. of New York; Thomas Alexander, Esq., clerk of U. S. district court, so. dist. of New York:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the city of Washington within thirty days from the date of this writ, pursuant to an appeal duly allowed by the circuit court for the southern district of New York, and filed in the clerk's office of said court on the 11th day of November, A. D. 1903; in a cause entitled, In the matter of the petition of George W. Beavers, for writs of *habeas corpus* and certiorari, George W. Beavers, appellant against William Henkel, United States marshal in and for the southern district of New York, Samuel M. Hitchcock, U. S. commissioner in and for southern district of New York and Thomas Alexander, clerk of the district court of the United States in southern district of New York, appellees, to show cause, if any why the final order of the said circuit court rendered against the said appellant as in said appeal mentioned, should not

be corrected, and why speedy justice should not be done to
206 the parties in that behalf.

Witness the Honorable E. Henry Lacombe, judge of the circuit court of the United States, this 11th day of November, A. D. 1903.

E. HENRY LACOMBE,
Justice of the Circuit Court of the United States.

(Endorsed:) U. S. circuit court, southern dist. of N. Y.—George W. Beavers, appellant, *vs.* William Henkel *et al.*—Citation on appeal. Morgan & Seabury, attorneys for defendant, No. 290 Broadway, New York, N. Y.—A copy of the within paper has been this day received at this office. Nov. 11, 1903, Henry L. Burnett, U. S. att'y.—U. S. circuit court, southern district of New York, Filed Nov. 11, 1903, John A. Shields, clerk.

207 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 206, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled In the matter of the petition of George W. Beavers for a writ of *habeas corpus* and certiorari, George W. Beavers, appellant, against William Henkel, United States marshal in and for the southern district of New York, and others, appellees, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 23rd day of December, in the year of our Lord one thousand nine hundred and three, and of the Independence of the said United States the one hundred and twenty-eighth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States Supreme Court. George W. Beavers, appellant, *vs.* William Henkel, U. S. marshal, S. D. of N. Y., and others, appellees. Transcript of record from the circuit court of the United States for the southern district of New York.

Endorsed on cover: File No. 19,186. S. New York C. C. U. S. Term No. 535. George W. Beavers, appellant, *vs.* William Henkel, United States marshal in & for the southern district of New York. Filed January 4", 1904. File No. 19,186.